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trial

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 TODD KREISLER,

4 Plaintiff,

5 v.

10 Civ. 7592 (RJS)

6 SECOND AVENUE DINER CORP. and  
7 J.J.N.K. CORP.,

8 Defendants.

-----x

9 October 12, 2011

10 9:10 a.m.

11 Before:

12 HON. RICHARD J. SULLIVAN,

13 District Judge

14 APPEARANCES

15 LAW OFFICES OF ADAM SHORE  
16 Attorneys for Plaintiff  
17 BY: ADAM T. SHORE

18 PAUL STAMATELATOS  
19 Attorney for Defendants  
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1 (Trial resumed)

2 THE COURT: Let's get started, folks. I think we said  
3 9:00, right? We lost some time yesterday so I wanted to make  
4 up for it today by starting at 9:00. So, Mr. Shore, you have  
5 your next witness?

6 MR. SHORE: Yes, your Honor. My next witness is Leon  
7 Geoxavier, plaintiff's expert, registered architect.

8 THE COURT: Do we have anything we need to cover  
9 before we move on with the next witness?

10 MR. STAMATELATOS: No, your Honor.

11 THE COURT: Mr. Shore, ready to go with the next  
12 witness?

13 MR. SHORE: Yes, your Honor.

14 THE COURT: Okay.

15 LEON GEOXAVIER,

16 called as a witness by the Plaintiff,

17 having been duly sworn, testified as follows:

18 THE COURT: State your name and spell your name for  
19 the record.

20 THE WITNESS: Leon Geoxavier. G-E-O-X-A-V-I-E-R.

21 THE COURT: Good morning.

22 THE WITNESS: Good morning, sir. Speak like that,  
23 that should be fine. Don't talk too fast. The court reporter  
24 is very good but there is a limit to what 10 fingers can do.

25 Mr. Shore, you may proceed.

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trial

1 DIRECT EXAMINATION

2 BY MR. SHORE:

3 Q. Good morning, Mr. Geoxavier. Are you a registered  
4 architect?

5 A. I am.

6 Q. In what states are you a registered architect?

7 A. I currently hold collective architecture licenses in the  
8 States of New York and Pennsylvania.

9 Q. Do you have any experience in dealing with making places  
10 public accommodation accessible to people with mobility  
11 impairments?

12 A. I do.

13 Q. When did you first gain experience in doing that?

14 A. I began working in a New York State firm following college  
15 graduation in 2003. Since that time I have had several clients  
16 where we have analyzed, designed, and overseen installation of  
17 various accommodations.

18 Q. Are you familiar with the facts of this case?

19 A. Yes, sir.

20 Q. Did you prepare an affidavit regarding your inspection of  
21 the facility inspection of the Second Avenue Diner Corp. doing  
22 business as Plaza Diner Corp. at 1066 Second Avenue on June  
23 15th, 2011?

24 A. I did.

25 MR. SHORE: I will mark the affidavit into evidence.

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Geoxavier - direct

1 THE COURT: Any objection. This is the report or the  
2 affidavit?

3 MR. STAMATELATOS: No, your Honor.

4 MR. SHORE: The affidavit and report.

5 THE COURT: Which is Plaintiff's Exhibit? Does it  
6 have a number?

7 MR. SHORE: Yes, it does, your Honor. Plaintiff's  
8 Exhibit 13.

9 THE COURT: 13. Okay. And no objection you said,  
10 right, Mr. Stamatelatos?

11 MR. STAMATELATOS: That's correct, your Honor.

12 THE COURT: Plaintiff's Exhibit 13 is received.

13 (Plaintiff's Exhibit 13 received in evidence)

14 BY MR. SHORE:

15 Q. Mr. Geoxavier, is this the affidavit that you prepared?

16 A. It is, sir.

17 THE COURT: I don't know what you have in front of you  
18 but what is my Plaintiff's Exhibit 13 is a letter to you,  
19 Mr. Shore. Is that what you're referring to or something else?

20 MR. SHORE: There is a letter, I believe, after the  
21 letter. There is an additional affidavit and it states  
22 affidavit of the initial letter and then the letter was turned  
23 into an affidavit, it states affidavit of Leon Geoxavier R.A.  
24 At the top it says 1066 Second Avenue a/k/a Plaza Diner.

25 THE COURT: And it says page?

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Geoxavier - direct

1 MR. SHORE: 1 of 4.

2 THE COURT: This is part of Exhibit B to Plaintiff's  
3 Exhibit 13?

4 MR. SHORE: Yes.

5 THE COURT: So the only thing you're introducing is  
6 the affidavit, is that what you are saying?

7 MR. SHORE: Yes, your Honor.

8 THE COURT: All right.

9 BY MR. SHORE:

10 Q. Did you notice any violations of the ADAG or the Americans  
11 with Disabilities Guidelines when you did your inspection of  
12 Second Avenue Diner Corp./Plaza Diner?

13 A. In reviewing the site I did have several concerns about  
14 compliance that I documented. It's in the affidavit. I can  
15 read them, but.

16 Q. We'll start with the entrance. What did you note about the  
17 entrance when you inspected 1066 Second Avenue, the Plaza  
18 Diner?

19 A. When I examined the site I noted that there was a step from  
20 the public sidewalk into a vestibule and then from that  
21 vestibule one could enter into the interior space. There are  
22 two doors that need to be traversed to get from the public  
23 sidewalk into the interior, and the codes that we reference  
24 outline the requirements of a space one has to have to make  
25 that entry and I do not believe that current condition

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Geoxavier - direct

1 complies.

2 Q. Which condition are you specifying? Are you talking about  
3 the step?

4 A. The step and the clear space and the doors, basically.

5 Q. With regard -- let's address each one of those issues  
6 separately.

7 With the step, why is the step in violation? For  
8 example, are spaces of public accommodation required to have a  
9 permanent ramp in accordance with the ADAG unless a portable  
10 ramp isn't achievable? Is that your familiarity?

11 A. My understanding of the code is that accommodations have to  
12 be provided where one can traverse from the public thoroughfare  
13 into the space without barriers, so to speak.

14 Q. Do you think permanent ramp can be installed at the Plaza  
15 Diner?

16 A. Yes. I believe it is feasible.

17 Q. Are there numerous different ways in which a ramp can be --  
18 a permanent ramp can be installed or is there only one way?

19 A. No, there is several ways in order to construct a ramp. It  
20 could be a ramp solely on the interior of the space.

21 Q. When you say ramp you're talking about a permanent ramp?

22 A. Correct.

23 Q. We will get into portable ramps after. So, the first  
24 permanent ramp you mentioned was a ramp into the interior, an  
25 inwards ramp?

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Geoxavier - direct

1 A. Correct. One could construct a ramp from the grade level  
2 at the public sidewalk to the finished floor level on the  
3 interior where the wrap is on the interior of the space. One  
4 could construct it on the outside of the space going from  
5 sidewalk grade up to finished level and then finished level  
6 inside.

7 So, there are a number of ways that one can design a  
8 ramp to get from grade to finished floor. It is not a  
9 significant or impossible distance.

10 THE COURT: Well, how long would a ramp have to be?  
11 It can't be too steep, right?

12 THE WITNESS: There are requirements into how steep a  
13 ramp can be -- well, there are two things I want to say about  
14 that, one is it depends on the configuration of the ramp and  
15 then so if you are able to achieve the distance for the height  
16 that you're going, you may be fine. If, for some reason, you  
17 can't accommodate that distance and need to compress the ramp  
18 to make it slightly steeper than what the letter of the code  
19 allows, there are waivers and variances for that condition.

20 THE COURT: Well, did you measure how much space there  
21 was in the interior from the first door to the second door?

22 THE WITNESS: Well, the first door and the second door  
23 are perpendicular at 90 degrees, from my recollection. There  
24 is perhaps a couple of inches of space in that vestibule but it  
25 is not a significant distance.

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Geoxavier - direct

1 THE COURT: Well, did you measure it is my question.

2 THE WITNESS: I did not measure it, sir.

3 THE COURT: No. Why not? Isn't that a relevant issue  
4 as to whether it is feasible to build a ramp in a fairly  
5 confined space to figure out what the grade would be?

6 THE WITNESS: I'm not sure I understand your question.

7 In terms of did I measure the height of the step or  
8 the distance between the doors?

9 THE COURT: The distance. The length that a ramp  
10 would be if it were to be an interior one. You say one way to  
11 do this would be an interior ramp was you enter at street  
12 level, you knock down the step and then you have a ramp going  
13 from street level to the finished floor that's about eight  
14 inches high, is that correct? Or did you not measure that?

15 THE WITNESS: Well, I believe I measured it. I don't  
16 remember what the actual measurement was. But I will say for  
17 that space --

18 BY MR. SHORE:

19 Q. Can you give an approximation of how many inches the step  
20 is?

21 A. Approximately seven to seven and a half inches there, what  
22 I remember. I would have to verify my notes.

23 Q. Did the step vary in height?

24 A. Yes, because the adjacent sidewalk was not completely  
25 level.



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Geoxavier - direct

1 But I will say to answer your question, sir, that the  
2 space of the diner, there is enough space in that facility to  
3 accommodate a ramp. It may not be the best design or what  
4 makes the most sense, logistically. There are a lot of design  
5 options. If, for some reason, you don't want a ramp on the  
6 inside because it takes too much space, you can put it on the  
7 outside.

8 THE COURT: What if you don't want people to slip and  
9 fall? You don't want it too steep because people may slip and  
10 fall, right? If it is a very confined space and very steep  
11 ramp then that may not be feasible, perhaps.

12 Do you have an opinion as to whether or not that might  
13 be a concern?

14 THE WITNESS: If I'm interpreting your question  
15 correctly, if you're asking if one could build a ramp within  
16 the existing vestibule, I don't think that's feasible because  
17 it is a small space and it would be a little too steep.  
18 However, within the space in general one could construct an  
19 interior ramp.

20 Does that make sense?

21 THE COURT: I think so.

22 THE WITNESS: I'm trying to interpret your question  
23 correctly.

24 THE COURT: In your view you would have to reconfigure  
25 the vestibule.

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Geoxavier - direct

1 THE WITNESS: Correct. You may also need to  
2 reconfigure the interior space slightly if you want to  
3 construct a ramp on the inside, on the interior.

4 THE COURT: Did you consider different options to do  
5 that?

6 THE WITNESS: Admittedly, I didn't go through the  
7 exercise of preparing different design options because I  
8 believe that's somewhat outside my role. I do believe a number  
9 of design options are feasible. Ultimately, the architect that  
10 would oversee the installation would coordinate the design with  
11 the tenant and owner.

12 THE COURT: What did you think your role was?

13 THE WITNESS: To assess the feasibility -- well, to  
14 assess the conditions and the feasibility of modifications. I  
15 believe modifications are feasible but I didn't draw them out  
16 and design them because that's something for the architect on  
17 behalf of the owner and tenant to do.

18 THE COURT: But, in terms of feasibility, what are the  
19 factors that inform your decision as to whether something is  
20 feasible?

21 THE WITNESS: Approximate spatial configuration; is  
22 the spacing large enough and could accommodate the  
23 installation.

24 THE COURT: Cost?

25 THE WITNESS: Admittedly --

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Geoxavier - direct

1 MR. SHORE: Well --

2 THE COURT: I'm asking the questions.

3 Did you consider cost as part of the analysis as to  
4 whether it would be feasible?

5 THE WITNESS: Relative cost I would say. I did not  
6 prepare a formal cost estimate and, generally, in terms of  
7 feasibility we look at, or at least I look at the physical  
8 configuration. I don't think the project would be a million  
9 dollars, so to speak. I do think it is within the realm of  
10 possibilities financially, if that makes sense.

11 BY MR. SHORE:

12 Q. When you are talking about cost estimates you are talking  
13 about cost estimates regarding the inwards ramp?

14 A. Well, correct, but --

15 Q. With regards to -- please just answer my question.

16 With regards to a ramp on the exterior of the facility  
17 along Second Avenue are you aware, is the Plaza Diner on the  
18 corner of 56th and Second Avenue?

19 A. Yes, I do.

20 Q. Can a ramp be installed on Second Avenue?

21 A. Yes, sir.

22 Q. And approximately how many inches along Second Avenue would  
23 that ramp have to be?

24 A. I don't know about inches. I don't have a calculator in  
25 front of me but it would be approximately 10 feet, maybe.

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Geoxavier - direct

1 Q. Is the slopage of a ramp generally 1 to 12? Is that what  
2 is required by code?

3 A. Yes, sir.

4 Q. Can it also be as low as 1 to 8 or 1 to 10 if the  
5 facility --

6 MR. STAMATELATOS: I object, your Honor. Mr. Shore is  
7 not an expert. If he wants to ask the expert a particular  
8 question about what slopage is, I have no problem with that,  
9 but I don't want him to lead the expert as to what the code is.

10 THE COURT: I think the objection is leading and I  
11 will sustain the objection.

12 BY MR. SHORE:

13 Q. So, what is your knowledge of what the slopage of a ramp  
14 has to be?

15 A. My understanding is that the general guideline is that the  
16 slope should be 1 to 12. However, as I stated earlier there  
17 are conditions and options for whether the slope can be  
18 steeper.

19 Q. In your opinion, can a permanent ramp be installed on  
20 Second Avenue -- a permanent be ramp be installed on Second  
21 Avenue outside the diner?

22 A. Yes, sir.

23 Q. Have you seen similar ramps at other places of public  
24 accommodation throughout the City?

25 A. Yes.

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Geoxavier - direct

1 Q. And those ramps, do they have handrails?

2 A. Yes.

3 Q. Do you think a handrail would be required in the  
4 installation of a permanent ramp if one were to be installed in  
5 this case?

6 A. I would recommend it. I don't know if the code or the City  
7 or governing agents would mandate it. And if for some reason  
8 it was deemed not advantageous, one could apply for a waiver  
9 not to have a handrail but, in general, I would recommend it.

10 THE COURT: Where would the exterior ramp go? Have  
11 you thought about that?

12 THE WITNESS: Yes. One could create a level landing  
13 outside the current vestibule and run a ramp towards the north  
14 along the west facing elevation of the building until it  
15 terminated with grade level.

16 THE COURT: To the north?

17 BY MR. SHORE:

18 Q. Mr. Geoxavier, if you can refresh your recollection in  
19 reading the expert report you prepared and I would also like to  
20 offer into evidence the defendant's expert report and as well  
21 as the pictures. I think the pictures have already --  
22 Plaintiff's Exhibit 15 have already been offered.

23 THE COURT: Plaintiff's Exhibit 15 is already in.

24 MR. SHORE: I would like to offer these into evidence.

25 THE COURT: 15 is in evidence so what are you --

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Geoxavier - direct

1 MR. SHORE: Plaintiff's Exhibit 14, defendant's  
2 expert.

3 THE COURT: Any objection?

4 MR. STAMATELATOS: No, your Honor.

5 THE COURT: Plaintiff's Exhibit 14 received.

6 (Plaintiff's Exhibit 14 received in evidence)

7 BY MR. SHORE:

8 Q. If I can present it to the witness so he can review both  
9 reports?

10 Mr. Geoxavier, if you can review your expert report  
11 first and then review the defendant's expert report? You  
12 reviewed both already, is that correct? Well, you drafted one,  
13 obviously, and defendant's expert report, have you read that  
14 previously?

15 A. I believe so, yes.

16 Q. Have you read the report?

17 A. Yes, sir.

18 Q. In your expert report it says to address the status a small  
19 ramp can be constructed from the sidewalk level up to the  
20 vestibule level?

21 A. Correct.

22 Q. Is that your opinion today as well?

23 A. Yes, sir.

24 Q. It also says the ramp should be constructed to meet all  
25 applicable accessibility requirements which include proper

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Geoxavier - direct

1 landings, a sloped ramp surface, railings, etc., and signage,  
2 correct? Is that your opinion today?

3 A. Yes, sir.

4 THE COURT: But, again, you have no cost analysis in  
5 your report, do you?

6 MR. SHORE: What would the --

7 THE COURT: No, no, no. I get to ask questions.

8 You didn't cost this out in any way, did you?

9 THE WITNESS: I didn't provide a formal written cost  
10 estimate, no.

11 THE COURT: Did you provide an informal one?

12 THE WITNESS: I believe in discussions I asked --

13 THE COURT: In your affidavit there is no mention of  
14 cost, right?

15 THE WITNESS: Correct. I don't believe I indicated  
16 that there was -- I don't think provided a formal cost  
17 estimate, no.

18 THE COURT: Did you not think that was a relevant  
19 consideration?

20 THE WITNESS: My understanding of what I was asked to  
21 analyze was current conditions and feasibility and --

22 THE COURT: But isn't cost a part of feasibility or is  
23 it not, in your view?

24 If this is a business that makes \$50,000 a year and it  
25 would cost a million dollars to do this, just as an example,

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Geoxavier - direct

1 that doesn't affect the feasibility, in your mind?

2 THE WITNESS: Can you -- I'm sorry. Can you say that  
3 again?

4 THE COURT: I'm saying if the cost was a million  
5 dollars and the income generated by the establishment was  
6 \$50,000 a year, would that impact your assessment of  
7 feasibility? Are you talking simply about design feasibility?

8 THE WITNESS: Forgive me, sir, but from an  
9 architectural engineering standpoint, no, not necessarily.  
10 But, I do understand your question. And if I thought that what  
11 I was recommending was so beyond reasonable in terms of  
12 feasibility I would indicate that.

13 For instance, if I recommended that the entire street  
14 of Second Avenue be moved 12 feet to the right, that obviously  
15 would be a physical impossibility and a financial impossibility  
16 and I would probably indicate that but I probably wouldn't  
17 recommend that at all. So, I was asked to provide --

18 THE COURT: But all you have said, in fairness, is to  
19 address the step a small ramp can be constructed from the  
20 sidewalk level up to the vestibule level.

21 THE WITNESS: Correct.

22 THE COURT: The ramp should be constructed to meet all  
23 applicable accessibility requirements which would include  
24 proper landing, a sloped ramp surface, railings, and signage.

25 THE WITNESS: Correct.



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Geoxavier - direct

1 THE COURT: That's the extent of your opinion with  
2 respect to the feasibility of building a ramp, right? Is there  
3 more to this that I have missed?

4 MR. SHORE: Your Honor, there is a point -- did you  
5 provide an informal cost estimate to me prior to today about  
6 what the installation of a ramp is on Second Avenue, what the  
7 cost would be?

8 A. I believe I indicated that in similar projects the cost  
9 ranged from between \$3,000 to \$10,000.

10 Q. Is that in your opinion what a permanent ramp would cost on  
11 the Second Avenue side?

12 A. For this particular project, yes.

13 THE COURT: Have you provided reports like this in  
14 other cases?

15 THE WITNESS: Yes, sir.

16 THE COURT: Do you typically include a cost assessment  
17 or not?

18 THE WITNESS: Not initially unless requested to, no.

19 BY MR. SHORE:

20 Q. Were you requested to provide a cost estimate in this case?

21 A. I don't believe so. Or I don't recall.

22 Q. Do you remember receiving an e-mail from me requesting cost  
23 estimates in the report?

24 A. Apparently, I don't. I don't recall.

25 Q. But your opinion today is as previously expressed to me,

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Geoxavier - direct

1 that the cost estimates of installing a permanent ramp is  
2 anywhere from \$3,000 to \$10,000 on Second Avenue?

3 A. Yes. I believe so, yes.

4 Q. Can a permanent ramp be installed on 56th Street between  
5 First and Second Avenue closer, obviously, to Second Avenue  
6 leading into the restaurant?

7 A. Potentially, yes.

8 Q. How would that be done?

9 A. One could reconfigure the entrance such that there was a  
10 landing and then a ramp that extended towards the east.

11 THE COURT: Is any of this in the report?

12 THE WITNESS: I don't -- no.

13 THE COURT: East, west, north, south?

14 The only thing in the report is that a small ramp can  
15 be constructed?

16 THE WITNESS: Correct, sir.

17 THE COURT: Okay.

18 BY MR. SHORE:

19 Q. Are you familiar with portable ramps?

20 A. Yes, sir.

21 Q. Do portable ramps -- what is your knowledge regarding  
22 portable ramps?

23 MR. STAMATELATOS: I object, your Honor. There is no  
24 mention of any portable ramps in the expert's report so I --

25 MR. SHORE: Just because it is not in an expert report

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Geoxavier - direct

1 doesn't mean the expert can't testify as to it.

2 THE COURT: Well, I mean --

3 MR. SHORE: Certainly the defendants have provided  
4 pictures of a portable ramp.

5 THE COURT: Are you an expert in portable ramps? Do  
6 you know anything about portable ramps?

7 THE WITNESS: I do. In working with buildings and  
8 facility managers occasionally portable ramps are procured and  
9 used in various situation.

10 THE COURT: I will allow the question. Go ahead.

11 BY MR. SHORE:

12 Q. Do portable ramps -- do you know if the ADAG states that  
13 portable ramps should take into consideration non-slip surfaces  
14 as well as handrails on the portable ramp?

15 A. There are --

16 THE COURT: Now you're asking him about his knowledge  
17 of regulations, not about his area of expertise. I thought you  
18 were going to ask him something about -- the regulations are  
19 what they are. Is there any reason why I need this witness to  
20 tell me what the regulations are?

21 MR. SHORE: If the Court is going to take judicial  
22 notice of the ADAG standards, possibly not. I think the ADAG  
23 standards state that with regards to portable ramps they should  
24 only be used when permanent ramps are not readily achievable  
25 and when portable ramps are used --

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Geoxavier - direct

1 THE COURT: I don't need this witness to tell me legal  
2 standards or regulations so let's ask him things about the  
3 subject he is expert in.

4 BY MR. SHORE:

5 Q. What about the restroom; did you, in paragraph 3 of your  
6 affidavit, you talk about the restrooms? Were the restrooms  
7 compliant?

8 A. No. No, sir.

9 Q. Do you recall what the restrooms looked like?

10 A. I do.

11 Q. If you want to refresh your recollection there are pictures  
12 of the restrooms at the table that were marked into evidence.

13 A. I believe this photo reflects what I saw when I visited the  
14 site.

15 Q. Do you remember if there was a men's and women's restroom?

16 A. I believe there was.

17 Q. Did you go into both the men's and women's restroom?

18 A. No, sir, just the men's.

19 Q. Why did you only go into the men's restroom?

20 A. I believe the women's room was out at the time of my visit  
21 and I also didn't think it was necessary.

22 Q. Why didn't it -- were you aware that the plaintiff in this  
23 case was a male when you did your expert inspection?

24 MR. STAMATELATOS: Object, your Honor. Leading the  
25 witness.

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Geoxavier - direct

1 MR. SHORE: I'm asking him a question, not leading the  
2 witness.

3 THE COURT: I will allow that.

4 You knew that Mr. Kreisler was male?

5 THE WITNESS: I admittedly did not know who the  
6 individual was until after the visit.

7 THE COURT: All right, but your report says the  
8 existing restroom facilities do not comply with ADA codes.

9 THE WITNESS: Correct, sir.

10 THE COURT: You only inspected one of the restrooms?

11 THE WITNESS: Correct.

12 THE COURT: And then in terms of the way in which the  
13 facilities do not comply with ADA codes you say Code issues  
14 concerning the restroom include the fact that an existing sink,  
15 toilet and washroom accessories do not meet the code  
16 requirements for those items?

17 THE WITNESS: Correct, sir.

18 THE COURT: So they don't comply with the ADA codes  
19 and the issues include the fact that they don't comply with the  
20 codes. I mean, could you be more specific?

21 THE WITNESS: The codes indicate that there are  
22 required clear floor areas in front of fixtures which in this  
23 case I do not believe exist. The code requires that certain  
24 accessories be provided which also do not exist.

25 THE COURT: Well, what was -- how much space was your

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Geoxavier - direct

1 understanding as to what is required by the code?

2 THE WITNESS: I usually consult a code book when doing  
3 a formal design so I don't want to misspeak.

4 THE COURT: This is your report. You've said that the  
5 restroom didn't comply with codes.

6 THE WITNESS: Correct, sir.

7 THE COURT: In what way does it not comply with code?

8 THE WITNESS: The floor area inside of the sink is  
9 required to be certain dimensions that I could see did not --

10 THE COURT: What dimensions are required?

11 THE WITNESS: I believe the clear floor space in front  
12 of a sink is approximately two foot by three foot square but,  
13 again, I would like to reference a code book to verify that  
14 answer.

15 THE COURT: What you did observe?

16 THE WITNESS: It has less than a clear floor area.

17 THE COURT: How much did it have?

18 THE WITNESS: The center of the faucet of the sink is  
19 less than 18 inches from the adjacent wall which I believe is  
20 too small of a space.

21 THE COURT: Less than 18 inches?

22 THE WITNESS: As an example.

23 THE COURT: 18 inches is not in the report, right?

24 THE DEFENDANT: Correct, sir.

25 THE COURT: Did you measure it?

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1 THE WITNESS: I did not measure it, no.

2 THE COURT: So, how do you know it is less than 18?

3 THE WITNESS: Visually I could perceive that the  
4 distance was less than what would be required. In the photo it  
5 is also adjacent, a four by four tile.

6 THE COURT: What photo are you referring to?

7 THE WITNESS: I'm looking at apparently the second  
8 page of Plaintiff's Exhibit 15.

9 THE COURT: 15-2? They should have numbers on the  
10 page, the second page --

11 THE WITNESS: It looks like this. We are looking at  
12 the same photo.

13 THE COURT: 15-2.

14 THE WITNESS: For example, grabs bars are required on  
15 the rear of a toilet and on the sides of a toilet, just  
16 generally one side is acceptable although many facilities have  
17 a pull down bar that functions for both sides. But, again, one  
18 side is allowable.

19 MR. SHORE: When you say one side what do you --

20 THE WITNESS: Forgive me.

21 If you are looking at the toilet in the photo there is  
22 a bar at the right but no bar at the rear and a bar is required  
23 at the rear. So, that's noncompliance if you were to have that  
24 accessory. You are required to have a mirror at a minimum and  
25 maximum height, I didn't see that. You are required to have

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Geoxavier - direct

1 some kind of guard or insulation or protection for the pipes  
2 beneath the sink so that if someone is in a wheelchair let's  
3 say they don't burn themselves or hit themselves on a pipe; I  
4 didn't see that.

5 So, there are a number of individual items that don't  
6 comply with code. I could generally see that the facility did  
7 not comply with code. I admittedly did not prepare an  
8 exhaustive inventory referencing all the applicable codes for  
9 this particular situation.

10 BY MR. SHORE:

11 Q. If someone is claiming to be exempt from making their  
12 facility accessible to people with disabilities due to a lack  
13 of financial resources, are they required to make a request  
14 from the Mayor's Office of Disability?

15 A. Yes, sir.

16 THE COURT: Does this go to his expertise as an  
17 architect?

18 MR. SHORE: I think it does. Yes, your Honor.

19 THE COURT: It sounds again like a legal or regulatory  
20 issue.

21 MR. SHORE: I think it would be helpful to the case if  
22 he could answer the question. And I don't think -- it is  
23 regulatory issue and it is mentioned in his report, the Mayor's  
24 Office for --

25 MR. STAMATELATOS: It is not in his report, your



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Geoxavier - direct

1 Honor. He mentions these approvals have to be given from the  
2 Mayor's office for certain changes to facility. I will object  
3 to him answering any question relating to the Mayor's office.

4 THE COURT: The report says all recommendations in  
5 this report are subject to review and approval by the DOB --  
6 Department of Buildings -- is that correct, MOPD, Mayor's  
7 Office for People with Disabilities and all other governmental  
8 agencies having jurisdiction. So, that's in the report.

9 What was your question, Mr. Shore?

10 BY MR. SHORE:

11 Q. If someone is claiming they don't have -- a place of public  
12 accommodations is claiming they don't have the money or the  
13 financial resources to make the facility accommodation  
14 accessible to people with mobility impairments or people with  
15 other disabilities, are they required to request an exemption  
16 from the MOPD -- Mayor's office of People with Disabilities?

17 A. In my experience, yes.

18 I have worked with clients where the full compliance  
19 may not be feasible because of either physical conditions, the  
20 existing conditions of the building, the store conditions or  
21 financial difficulty and the process, to my knowledge, is that  
22 after getting approval from the Department of Buildings or  
23 review from the Department of Buildings I should say, one could  
24 request a waiver from certain code requirements from the  
25 Mayor's Office of People with Disabilities.

1AC5KRET

Geoxavier - direct

1 Q. Did you review the defendant's expert report that is marked  
2 into evidence at the table in front of you?

3 A. Yes, sir.

4 Q. Does the Department of Transportation offer building  
5 permits? Or does the Department of Buildings offer building  
6 permits?

7 A. My understanding is the Department of Buildings is the  
8 primary regulatory agency for building permits. However, if  
9 the --

10 Q. If you can just answer the question?

11 A. Sorry, sir.

12 THE COURT: I think he was answering the question.

13 Go ahead, continue. What were you going to say?

14 THE WITNESS: In certain scenarios, depending on the  
15 location of the project relative to the sidewalk or the street,  
16 approval and review from the Department of Transportation may  
17 be required in certain scenarios.

18 BY MR. SHORE:

19 Q. To your knowledge, does there have to be -- withdraw the  
20 question.

21 To your knowledge is there any reason why a permanent  
22 ramp cannot be built on Second Avenue in front of the Second  
23 Avenue Diner on 56th Street?

24 A. No, sir.

25 Q. Is there anything in the defendant's expert report

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Geoxavier - direct

1 regarding street vendors or telephone booths or the sidewalk is  
2 too narrow? Do you find that to be true or untrue in your  
3 opinion, that the sidewalk is too narrow and street vendors and  
4 the telephone booth prevent installation of a permanent ramp?  
5 What is your opinion on that?

6 A. I guess I would disagree with some of the assertions made  
7 in the report and I would recommend that we seek the official  
8 word of the Department of Transportation or buildings if that  
9 is what is being disputed. I would contest some of the  
10 findings, though.

11 Q. What is the process for obtaining a permit in New York  
12 City? What is your understanding of obtaining a permit for a  
13 ramp in New York City?

14 A. Once design drawings are prepared they are submitted to the  
15 Department of Buildings. From there the Department of  
16 Buildings will indicate whether additional approvals are  
17 required from agencies like the Department of Transportation or  
18 the MTA or the Landmarks Preservation Commission. So, you will  
19 be referred to get approval them. Once you have approval from  
20 them you can go back to Department of Buildings and follow  
21 through with the permitting process and then a work permit is  
22 issued, the work is performed, and the work is signed off.

23 Generally, that's how it works. There is a lot of  
24 details I'm skimming over.

25 Q. To your knowledge is there any hold on applying for a

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Geoxavier - direct

1 permit from the Department of Buildings for a permanent ramp at  
2 the facility in question here?

3 A. No, sir.

4 THE COURT: Did you inquire? What is the basis for  
5 that opinion?

6 THE WITNESS: I was working on a project on Second  
7 Avenue north of 96th Street where the subway project is going  
8 on and there were concerns about whether there were any project  
9 freezes in the Second Avenue zone and my understanding is that  
10 the MTA requires approval or review of certain projects in that  
11 zone but there is no impediment to receiving approvals.

12 There are similar situations at times with the  
13 Department of Transportation. The Department of Transportation  
14 puts temporary review freezes on projects, for instance if you  
15 are working in a very crowded area, embargoes, but again, those  
16 are temporary and depending on the project it can be approved  
17 regardless depending on the specific situation, if that makes  
18 sense.

19 THE COURT: Okay.

20 BY MR. SHORE:

21 Q. It does.

22 Are there any violations of the Americans with  
23 Disabilities Act, the New York City Human Rights Law or the New  
24 York State Human Rights law that you observed at the Plaza  
25 Diner when you conducted your inspection?

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Geoxavier - direct

1 A. Any potential concerns or violations that I had I indicated  
2 in my report. I admittedly didn't do an exhaustive analysis of  
3 the site to see if there were any other. There may be.

4 Q. Did you probe into any of the walls?

5 A. I did not perform any investigative probes.

6 Q. Is probing into the walls of, say, the restroom sometimes  
7 conducted?

8 MR. STAMATELATOS: I object, your Honor. I don't know  
9 what is the relevance of this line of questioning.

10 THE COURT: I'm not sure I understand the question or  
11 the answer. Let's rephrase the question.

12 BY MR. SHORE:

13 Q. With regard to the restrooms, did you notice they're  
14 directly adjacent to each other?

15 A. I did, sir.

16 Q. Is there any reason the bathrooms can't be combined into a  
17 unisex restroom?

18 A. No, sir.

19 Q. Is there any reason why one of the bathrooms can't be  
20 expanded to make it fully accessible in accordance with the ADA  
21 guidelines?

22 A. No, sir.

23 THE COURT: But did you do any kind of cost analysis  
24 for the restrooms?

25 THE WITNESS: I did not prepare a written cost

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Geoxavier - direct

1 analysis, no.

2 THE COURT: Well, did you do any cost analysis whether  
3 you prepared a written one or not; did you do one?

4 THE WITNESS: I can do a mental one right now.

5 THE COURT: Have you prior to today done one?

6 THE WITNESS: No, sir.

7 THE COURT: All right.

8 BY MR. SHORE:

9 Q. The last question for you is in the event, say there was a  
10 hold on, for example, on obtaining a permit from the Department  
11 of Buildings or DOT, after the hold could the diner then apply  
12 for a permit to obtain a permanent ramp?

13 A. I guess going back to a question prior, I don't believe  
14 there is a hold right now but in theory if there were a  
15 temporary embargo for whatever reason, I imagine after it is  
16 lifted one can proceed with permitting. It seems like a  
17 hypothetical question.

18 Q. Is there any limit on how many times someone can apply for  
19 a building permit?

20 A. Not to my knowledge.

21 Q. So, if someone is denied a building permit they can reapply  
22 for another building permit?

23 A. If someone is denied a building permit --

24 Q. For one reason?

25 A. -- for a reason you can reapply. Yes, you can.

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Geoxavier - direct

1 Q. If a facility didn't have the financial resources to make  
2 it fully accessible at certain times, does that mean that place  
3 cannot be made accessible?

4 MR. STAMATELATOS: I object, your Honor. Calls for  
5 speculation.

6 THE COURT: Sustained as to form.

7 MR. SHORE: Counsel, let me finish my question.

8 THE COURT: Sustained as to form, clearly, and I think  
9 it is compound as well. Start over.

10 BY MR. SHORE:

11 Q. Are there certain steps that the Plaza Diner can take to  
12 make it more accessible that can be done with that much  
13 difficulty, cost or expense?

14 THE COURT: What is the "it"? The restroom  
15 specifically or other things?

16 BY MR. SHORE:

17 Q. Let's talk about the entrance first or, yes, the restroom  
18 or the entrance. Both of them.

19 A. Yes.

20 Q. What can be done without much difficulty or expense?

21 A. I think one of the things I indicated in my report was that  
22 I had concerns about signage. Signage is easily or relatively  
23 easier to install compared to a more intensive installation.

24 THE COURT: Signage that would say what?

25 THE WITNESS: Signage indicating the entrance that

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1 complies with the ADA codes for letter sizing and tactibility,  
2 any special call for service or assistance. The code is pretty  
3 expansive and there are a number of little things that you can  
4 do compared to big ones which seems like the question.

5 THE COURT: Well, I'm just trying to understand, is it  
6 signs in lieu of a ramp or as part of a ramp?

7 THE WITNESS: As part of the overarching accessibility  
8 package it can be broken down into parts.

9 THE COURT: So the sign should say what?

10 THE WITNESS: I would like to reference the code to  
11 provide you with a -- I can't provide a diagram right now.

12 MR. SHORE: I have the ADAG standards with me.

13 THE COURT: He is your expert.

14 BY MR. SHORE:

15 Q. What are your requirements for the site and on the exterior  
16 building when there is a portable ramp? Are there certain  
17 requirements for having signage when you have a portable ramp  
18 or buzzer?

19 A. There are. It can't -- I admittedly don't quote the code  
20 letter for letter every day. We keep reference books in online  
21 systems so that we have it accessible to us without memorizing  
22 especially because there are updates periodically.

23 My understanding, you are required to have a certain  
24 size and shape and it has to have lettering of certain size and  
25 shape; there has to be contrast between lettering and



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1 background and there has to be either tactibility in the  
2 letters or a supplemental braille system so I don't want to  
3 give the Court an incorrect answer by saying it has to be  
4 dogmatically XYZ. Generally, the architect for the building or  
5 this project would do a design and then be able to say this is  
6 what you need if you understand what I'm saying.

7 BY MR. SHORE:

8 Q. Does signage have to be permanently affixed to the outside  
9 of a facility?

10 A. Yes.

11 Q. What about the restrooms? In the case of a restroom, even  
12 if it is not fully compliant with the ADA guidelines should  
13 there still be a sign addressing people with mobility  
14 disabilities as to which restroom is accessible? Should there  
15 be signage on the outside of a door?

16 A. There should be signage for the restroom. I don't believe  
17 the restrooms are currently accessible so maybe they shouldn't  
18 say accessible but they should indicate the bathrooms and be of  
19 a certain size and shape. With regards to the restrooms there  
20 are a gamut of concerns, some are more easily addressable than  
21 others. Accessories can be installed relatively simpler  
22 compared to maybe creating sufficient floor space, if that  
23 makes sense.

24 THE COURT: What sign would be necessary for the  
25 restrooms?

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Geoxavier - direct

1 THE WITNESS: Generally you would need a sign that's  
2 perhaps 4 by 6 that is white lettering on a dark background or  
3 white lettering on dark background that is tactile, that is  
4 graphic, and that has if not tactibilty some kind of  
5 braille -- supplemental braille system. Again, I don't want to  
6 mislead the Court by giving an overly dogmatic description of  
7 what is needed because that's the responsibility of the owner  
8 and tenants architect to perform.

9 BY MR. SHORE:

10 Q. Have you heard of international accessibility?

11 A. That is one of the graphic symbols that's referenced.

12 Q. What does the international symbol of accessibility have on  
13 it?

14 A. It has a circle and a line and have then a half circle  
15 indicating a wheelchair.

16 Q. Do you think that would be appropriate in this case to  
17 provide the international symbol of accessibility on the  
18 outside or inside of the facility?

19 A. If nothing is changed on the sign it would be somewhat  
20 misleading because it is not actually accessible.

21 Q. Defendants have testified that people in wheelchairs have  
22 been in the women's restroom before. There is pictures of the  
23 women's restroom in the photographs attached to the exhibit.

24 MR. STAMATELATOS: Object, your Honor. He has not  
25 been in the women's restroom, he cannot form an opinion.

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Geoxavier - direct

1 THE COURT: I haven't heard the question yet.  
2 Continue.

3 BY MR. SHORE:

4 Q. Based on the women's restroom -- I believe there is one at  
5 the end that contains a picture, a color photograph that  
6 contains a picture of the women's bathroom with the rear and  
7 side grab bar. If you can start with picture 15-B?

8 THE COURT: Wait. Wait. 15?

9 MR. SHORE: 15-2.

10 THE COURT: I thought this was the men's bathroom.

11 MR. SHORE: This is the men's bathroom.

12 THE COURT: I thought you were asking questions about  
13 the women's bathroom.

14 BY MR. SHORE:

15 Q. Let's ask questions about the men's bathroom quickly.  
16 Should there be a rear grab bar?

17 A. Yes.

18 Q. Can the defendant's garbage can be located somewhere else?

19 A. Yes.

20 Q. Can insulation be provided under the sink to prevent burns  
21 and prevent -- and to allow adequate clearance for people in  
22 wheelchairs to put their legs underneath the sink?

23 A. Yes.

24 Q. And to prevent them from bumping their knee as well?

25 A. Yes.

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Geoxavier - direct

1 Q. Does the soap dispenser appear too high?

2 A. It does.

3 THE COURT: Appears too high? How high should it be  
4 and how high is it?

5 THE WITNESS: The standards, I believe, reference a  
6 minimum height of approximately 42 to 48 inches depending on  
7 circumstances. This appears well above that height.

8 THE COURT: Maximum height or minimum height?

9 THE WITNESS: Minimum height. Excuse me, maximum  
10 height. There is a range, minimum and maximum range and it  
11 appears based on this in the --

12 THE COURT: Based on how this picture appears?

13 THE WITNESS: Based on the picture and my visual  
14 recollection.

15 THE COURT: But you didn't measure it?

16 THE WITNESS: No, sir.

17 MR. STAMATELATOS: I would just like to point out  
18 something at this moment, your Honor. Mr. Shore has not laid a  
19 foundation as to when these pictures were taken so I would like  
20 him to limit his examination of the witness as to what is  
21 indicated on the pictures only not as to the time that these  
22 pictures were taken.

23 MR. SHORE: Your Honor, these exhibits are previously  
24 marked into -- stipulated and marked into evidence.

25 THE COURT: They're in evidence. I don't think --

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1 what has not been established, I don't think, is when they were  
2 taken. Do you think that's in the record?

3 MR. SHORE: I would have to call defense counsel and  
4 ask him since he is the one that provided them.

5 MR. STAMATELATOS: Mr. Shore introduced the pictures,  
6 your Honor.

7 MR. SHORE: Defense counsel provided the pictures to  
8 me, your Honor.

9 THE COURT: All I am asking is what is in the record.  
10 Again, I'm the finder of fact so if the record hasn't been made  
11 then it is not going to do anybody much good. I don't think  
12 the record is clear as to when the photos were taken.

13 BY MR. SHORE:

14 Q. I direct your attention to Exhibit 15-14; is that sign  
15 handicap accessible. Is that an accessible signage?

16 A. It doesn't appear to meet the criteria.

17 THE COURT: I didn't hear what you said. It  
18 definitely?

19 THE WITNESS: It doesn't appear to meet the criteria  
20 I'm familiar with, that I recall from the code.

21 MR. SHORE: I would like the Court to take -- the  
22 expert has mentioned the Code. I would like the Court to take  
23 judicial notice of the ADAG standards which require appropriate  
24 signage for both the entrance --

25 THE COURT: Let's deal with the witness.

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Geoxavier - direct

1 MR. SHORE: Okay.

2 BY MR. SHORE:

3 Q. Do you see the sign of the women's restroom?

4 THE COURT: What exhibit.

5 MR. SHORE: 15-23.

6 A. Yes, sir.

7 Q. Does the women's sign appear accessible?

8 A. It does not.

9 Q. Does it appear compliant with the ADAG standards in 28  
10 C.F.R. part 36?

11 A. I don't believe it meets those criteria.

12 Q. Again, 15-25, again the picture of the women's restroom,  
13 does that appear accessible to you?

14 A. No, sir.

15 Q. Do you think it would be humiliating to the plaintiff to  
16 have to go into a bathroom that has a women's sign on it?

17 MR. STAMATELATOS: I object, your Honor.

18 THE COURT: Sustained.

19 Are you an expert in psychology or humiliation or do  
20 you have a sense of these things based on your training as an  
21 architect?

22 THE WITNESS: Forgive me, sir, my --

23 THE COURT: You don't. Sustained.

24 Come on, Mr. Shore. He's an expert. Let's have him  
25 testify about things he can testify about.

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Geoxavier - direct

1 BY MR. SHORE:

2 Q. Is there anything else you think the Plaza Diner can do to  
3 make it more accessible to comply with the ADAG standards that  
4 hasn't been discussed yet today, this morning, or that is not  
5 in your expert affidavit?

6 A. I don't believe so. Again, my analysis was not exhaustive  
7 so there may be further violations that need to be addressed.

8 MR. SHORE: No further questions.

9 THE COURT: Okay. Mr. Stamatelatos, do you want to do  
10 cross-examination?

11 MR. STAMATELATOS: Sure, your Honor.

12 MR. SHORE: Your Honor, may I ask one more question?

13 THE COURT: Yes.

14 BY MR. SHORE:

15 Q. Defendant's expert report states that the liquor license  
16 prevent the facility from having a unisex restroom. Are you  
17 are aware of any such law that prevents a facility in New York  
18 from having a unisex bathroom?

19 A. I have read and I am familiar with I believe the local law  
20 that you're referencing and to my understanding there is no  
21 mandate that says one can't have a unisex restroom. There are  
22 a number of -- I believe in the particular code that you are  
23 mentioning there are a lot of sections of the code that  
24 indicate that there are waivers possible depending on  
25 situations so it is not overly dogmatic. I haven't seen

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1 anything that is overly dogmatic to say a unisex restroom would  
2 not be allowed.

3 MR. SHORE: Could the Court take judicial notice of  
4 local law of the City of New York year 2005, no. 57?

5 No further questions.

6 THE COURT: Okay. All right Mr. Stamatelatos.

7 CROSS EXAMINATION

8 BY MR. STAMATELATOS:

9 Q. Good morning, Mr. Geoxavier.

10 A. Good morning, sir.

11 Q. Isn't it true that only visited the Plaza Diner, 1066  
12 Second Avenue on June 15, 2011?

13 A. Correct, sir.

14 Q. Did you review any materials prior to your testimony today  
15 since your inspection on June 15, 2011?

16 A. Any materials? I believe I reviewed the affidavit that I  
17 had prepared and I believe I reviewed the report that was  
18 Exhibit 14, I believe. It was just that I just had --

19 THE COURT: The photos you mean.

20 THE WITNESS: No, the other report.

21 THE COURT: The other expert report.

22 BY MR. STAMATELATOS:

23 Q. The report of Peter Georgopoulos?

24 A. I believe so.

25 Q. Any other documents or reports that you might have reviewed



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Geoxavier - cross

1 prior to your testimony today?

2 A. No, sir.

3 Q. Isn't it true that you did not take any measurements of  
4 anything at the Plaza Diner on June 15, 2011?

5 A. I did take measurements with a tape measure. I didn't take  
6 exhaustive measurements or record them.

7 THE COURT: What did you measure? Do you recall?

8 THE WITNESS: I believe I measured the entrance step  
9 and a few dimensions. Again, I don't recall the actual  
10 measurements or their locations.

11 THE COURT: Did you take notes? When you were doing  
12 the measurements did you write them down?

13 THE WITNESS: No.

14 BY MR. STAMATELATOS:

15 Q. So, basically what you are testifying to today is just  
16 basically a recollection from approximately four months ago,  
17 correct?

18 MR. SHORE: Objection.

19 THE COURT: That's a fair question.

20 A. My visual recollection, yes, and the report that I wrote  
21 after the visit.

22 Q. Outside of what is on your report the rest is from your  
23 recollection four months ago, correct?

24 MR. SHORE: Objection. Asked and answered.

25 A. Correct.

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Geoxavier - cross

1 THE COURT: Overruled.

2 A. Correct.

3 BY MR. STAMATELATOS:

4 Q. So, what you are testifying to then, a lot of the things  
5 that you testified to might be incorrect. Is this a proper  
6 assumption I can make?

7 THE COURT: I didn't hear the question. Say it again.

8 Q. Some things you are testifying to today which are not in  
9 your report might be incorrect?

10 MR. SHORE: Objection, your Honor. Vague and  
11 ambiguous question. He is not even referencing what  
12 specific --

13 THE COURT: I will allow the question. I don't know  
14 what it is worth. If you can answer it you can answer it.

15 MR. SHORE: If he can repeat the question? I didn't  
16 understand it.

17 THE WITNESS: You said might, right? Some things  
18 might be incorrect?

19 BY MR. STAMATELATOS:

20 Q. That are not in your report because you are only testifying  
21 from recollection of something you saw four months ago.

22 MR. SHORE: Your Honor, objection. He didn't testify  
23 that he's testifying based just on his recollection, he is  
24 testifying of the inspection, he is testifying on his  
25 recollection of the inspection as well as his review of the

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Geoxavier - cross

1 expert reports in this case.

2 THE COURT: Mr. Stamatelatos, maybe you should break  
3 this down.

4 MR. STAMATELATOS: I will move on. That's fine.

5 THE COURT: The point is specific measurements are not  
6 in the report so with respect to measurements do you recall any  
7 of the measurements you made?

8 THE WITNESS: Again, I don't want to misquote and say  
9 a particular inch but I took measurements to gauge overall  
10 feasibility and gain overall understanding of the site.

11 THE COURT: Your recollection of the measurements is  
12 based purely on memory an not on any notes, right?

13 THE WITNESS: Generally, yes.

14 BY MR. STAMATELATOS:

15 Q. So you say that -- firstly, let's start with a permanent  
16 ramp. A permanent ramp can be built on the Second Avenue side  
17 of the diner, is that your testimony?

18 A. Correct.

19 Q. You say the cost would be approximately \$5,000 to \$10,000,  
20 correct?

21 THE COURT: He said from 3.

22 Q. I apologize. \$3,000 to \$10,000.

23 A. Yes.

24 Q. Can you tell me what would the width of that ramp,  
25 according to all codes applicable with New York City Department

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Geoxavier - cross

1 of Building, New York City Department of Transportation, any  
2 other governmental agency, be? What is the width of that ramp  
3 from the wall of the exterior of the diner extending out to the  
4 side wall including hand railings, how wide would it have to  
5 be?

6 A. I don't think I can give you a precise measurement because  
7 that would depend on the design that the architect would  
8 develop with the building owner and tenant and it would depend  
9 on the location of the property line relative to the facade  
10 based on land survey which I don't a copy of.

11 Q. So you have never seen a survey of the property at 1066  
12 Second Avenue, is that correct?

13 A. A land survey?

14 Q. Yes.

15 A. No.

16 Q. Because usually one would need a land survey if you are  
17 going to construct a permanent ramp on the exterior of a  
18 building or interior of a building correct? You would have to  
19 establish the property line?

20 A. If you are going to submit -- if I was doing the design  
21 drawings, yes, I would need that.

22 Q. Even if you are not doing design drawings would you not  
23 need a survey of the boundaries of the property on which the  
24 Second Avenue Diner is located?

25 A. In order to determine general feasibility, no, I don't. In

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Geoxavier - cross

1 order to prepare design drawings and give you an exact inch  
2 dimension, I would.

3 Q. Did you measure the width of the sidewalk which is located  
4 in front of the Plaza Diner?

5 A. No.

6 Q. Does the width of a sidewalk in front of a facility play  
7 any part in whether a permanent ramp can be installed at a  
8 particular location?

9 A. It depends on the scenario and the location.

10 Q. So, do you agree with me that from location to location it  
11 might be on the north side of a block, the same block or the  
12 south side of a block? Maybe the City might allow a permanent  
13 ramp on the north side of the facility on a block but would  
14 disallow it on the south side of the same block, another  
15 facility?

16 MR. SHORE: Objection, your Honor. Numerous compound  
17 questions.

18 THE COURT: Break that up.

19 Q. Let's take, for example, the Plaza Diner. It is located  
20 between what streets on Second Avenue?

21 A. 1066 block?

22 Q. Yes.

23 A. I would have to look at a map to confirm, but 50s? 56?

24 Q. Let's say that ramp on a corner in the 50s and look at a  
25 location in the Second Avenue line in the 90s. Let's assume

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Geoxavier - cross

1 that the City allows a ramp on the Second Avenue line in the  
2 90s. Can we assume from that that the City would allow a ramp  
3 where the Plaza Diner is located?

4 MR. SHORE: Objection, your Honor. Questions outside  
5 scope of direct.

6 THE COURT: Overruled. He testified about his  
7 experience on Second Avenue in the 90s.

8 BY MR. STAMATELATOS:

9 Q. In the 90s.

10 A. Is it possible that the city may not?

11 Q. May not allow a permanent ramp in front of the Plaza Diner?

12 A. I'm not aware of any particular regulation that does not.

13 Q. So, is it your testimony then that whenever somebody  
14 applies for a permanent ramp in front of a public facility the  
15 City will approve it no matter what?

16 A. The City allows you to apply for that permit and if there  
17 are circumstances for which they would not allow it, then they  
18 would not allow it but they would give you a reason and a  
19 waiver for it. I'm unaware if at this particular location any  
20 of those conditions exist.

21 Q. So, would the City allow it? How do you know the City  
22 would allow it at this particular location?

23 A. I don't see any reason why they wouldn't, frankly.

24 Q. Did you do any research with any governmental agency to  
25 ascertain whether a permanent sidewalk --

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1 THE COURT: Permanent ramp.

2 Q. -- or permanent ramp can be installed on the sidewalk on  
3 Second Avenue in front of the Plaza Diner?

4 A. Sorry. I'm not sure I understand your question correctly.

5 Q. Did you contact any governmental agency to ascertain  
6 whether a permanent ramp can be installed in front of the Plaza  
7 Diner on Second Avenue?

8 A. No.

9 Q. Do you know how long the ramp would be if it had to be  
10 installed in front of the Plaza Diner on Second Avenue, a  
11 permanent ramp? How long? What would the length have to be?

12 A. I believe the length could go the full distance of the  
13 facade.

14 Q. And how much, approximately, would that be?

15 A. I'm not sure I can give you an exact measurement.  
16 Somewhere between six and 12 feet perhaps. Maybe even longer.

17 Q. Now, let's assume that the permanent ramp is approved by  
18 the City and can be installed at the Plaza Diner. Once you  
19 construct the ramp you have to construct the landing as well,  
20 is that correct?

21 A. Correct.

22 Q. And what would the width and length of that landing have to  
23 be to comply with all governmental agency codes including to be  
24 ADA compliant?

25 A. I believe approximately five feet square but, again, it

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1 depends on the direction of travel and the direction of the  
2 configuration of the entrance. It would be an issue really for  
3 the designing architect, for the owner, and tenant to  
4 determine.

5 Q. Where would this landing have to be constructed?

6 A. There are several options in terms of where this landing  
7 could logistically sit. It would be at the end of the ramp and  
8 entrance but it depends on the configuration of the entrance  
9 and ramp by the design architect.

10 Q. Would this landing have to be constructed on the sidewalk  
11 or would it have to be constructed in the diner itself?

12 A. It could be a combination of both, either -- or, again, a  
13 combination where the landing bridges the distance between the  
14 two.

15 Q. But you did not research that aspect to testify in this  
16 particular case or compile your report, correct?

17 MR. SHORE: Objection, your Honor.

18 THE COURT: Sustained. No, overruled. I will allow  
19 this.

20 THE WITNESS: Did I prepare or outline drawings?

21 BY MR. STAMATELATOS:

22 Q. You --

23 THE COURT: Wait. Stop. Rephrase the question.

24 Q. You did not research where this landing would have to be  
25 located to make it compliant with any governmental agency, is



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1 that correct?

2 A. In terms of determining feasibility?

3 Q. Yes.

4 A. I believe that the landing can be installed. In terms of  
5 the location or design or configuration of it I did not prepare  
6 design drawings outlining where that would exist.

7 Q. You know that there is a vestibule at the entrance of the  
8 Plaza Diner, correct?

9 A. Yes. Correct.

10 Q. Once you enter the Plaza Diner what would be on your left?  
11 Do you recall?

12 A. Once I entered the outer door or the inner door?

13 Q. The inner door. Once you are inside the diner itself, you  
14 pass the vestibule, what would be on your left?

15 A. Facing which direction?

16 Q. Facing Second Avenue.

17 A. Facing Second Avenue?

18 Q. Yes.

19 A. On my left would be the door I just walked through.

20 THE COURT: Wait. Let's start over.

21 Is there a photo you want to show him?

22 MR. STAMATELATOS: No.

23 THE COURT: 15-1?

24 MR. STAMATELATOS: No. I'm not going to show him any  
25 photos, your Honor.

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1 Q. So, let's say you proceed past the door and once you enter,  
2 is there anything on the left?

3 A. Facing?

4 MR. STAMATELATOS: Second Avenue.

5 THE COURT: Facing Second Avenue means you are in the  
6 vestibule looking towards the street.

7 MR. STAMATELATOS: That's right.

8 THE COURT: You are talking about being in the  
9 vestibule looking towards the restaurant.

10 MR. STAMATELATOS: He is inside the restaurant, your  
11 Honor.

12 MR. SHORE: Your Honor, I believe it depends on which  
13 direction he is facing. Is he facing the street or facing the  
14 restrooms?

15 MR. STAMATELATOS: Facing south.

16 THE COURT: South I would be facing the door I just  
17 walked through.

18 BY MR. STAMATELATOS:

19 Q. You have passed through the vestibule and passed through  
20 the door?

21 A. Right.

22 Q. You entered the Plaza Diner?

23 A. Right.

24 Q. What would be on your left?

25 MR. SHORE: Your Honor, objection.

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1 THE WITNESS: If I'm facing south what would be -- am  
2 I allowed to answer?

3 THE COURT: Yes.

4 THE DEFENDANT: If I am facing south?

5 Q. Yes.

6 A. What would be on my left would be the restaurant. If I'm  
7 facing north what would be on my left is Second Avenue. And --

8 Q. Is there any seating areas when you entered the restaurant?  
9 Are there any seating areas, if you can recall?

10 A. I believe there are seating areas in the restaurant.

11 Q. Do you remember the seating configuration in the  
12 restaurant?

13 A. Specifically in terms of its layout?

14 Q. Yes.

15 A. No. I know generally there were booths and fixed seats in  
16 various locations but I couldn't quote exactly where they are.

17 Q. So, let's assume you build a ramp; the landing, would you  
18 have to change the interior doors that lead into the diner?

19 A. Potentially. Again, it depends on the design of the ramp.

20 Q. Now, let's assume Mr. Kreisler wants to enter the Plaza  
21 Diner. If the ramp and the landing is there can he enter the  
22 designer without changing anything else?

23 A. I'm sorry. Say that again.

24 Q. Assuming we build a ramp and the landing and Mr. Kreisler  
25 wants to enter the Plaza Diner, is he able to, yes or no?

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1 A. It depends on the configuration design of the ramp.

2 Q. We build the ramp according to whatever configuration you  
3 want and the landing, can he then enter the diner?

4 MR. SHORE: Objection. Asked and answered.

5 A. Yes.

6 THE COURT: He didn't answer.

7 A. Yes. I mean, if you design a ramp up to the space can you  
8 then enter the space?

9 Q. Yes.

10 A. Yes.

11 Q. With the existing doors as they are because we are only  
12 installing the permanent ramp and the landing. Can he still  
13 enter the Plaza Diner?

14 A. Forgive me, sir. The ramp and landing can be configured a  
15 number of different ways. Ultimately, the design architect  
16 would work with the tenant and owner on how the ramp would be  
17 configured and the relationship of the entry doors to that  
18 ramp. There may be modifications required, there may not. It  
19 is a pretty infinite hypothetical.

20 Q. So, am I correct then in saying that even if the Plaza  
21 Diner installs a permanent ramp with a landing it is not a  
22 hundred percent sure that Mr. Kreisler can still enter the  
23 Plaza Diner? Am I correct in assuming that?

24 A. It seems that you are asking me a hypothetical.

25 Q. Yes, I'm asking a hypothetical because there is --

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1 THE COURT: Hypotheticals are part of expert testimony  
2 all the time.

3 A. I'm just confirming. In theory one could design a code  
4 compliant ramp that leads into a non-code compliant space.

5 Q. Listen to my question. You are missing the point. There  
6 is a permanent ramp, right, the ramp itself and then there is a  
7 landing, right, so you have seen the Plaza Diner?

8 A. Yes, sir.

9 Q. Because you have made an expert report?

10 A. Yes, sir.

11 Q. So, let's assume the Plaza Diner constructs only a  
12 sidewalk, permanent ramp and a landing. Can Mr. Kreisler still  
13 enter the Plaza Diner without making any other changes other  
14 than installing the ramp and the landing?

15 A. Potentially.

16 Q. He can. Okay. So then the door is fine for Mr. Kreisler  
17 to enter the Plaza Diner there, correct?

18 A. Well, forgive me. Mr. Kreisler? I have only met  
19 Mr. Kreisler relatively recently so I don't -- and I'm not an  
20 expert in terms of his personal abilities to traverse anywhere,  
21 truthfully. In terms of code compliance, one could create a  
22 code compliant ramp and then have a non-code compliant interior  
23 which I think is what you're asking me.

24 Q. I'm not asking. I'm just asking you if one constructs the  
25 ramp.

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1 A. I can't speak to his ability to travel anywhere.

2 THE COURT: Let him finish what he was going to ask.

3 THE WITNESS: Sorry.

4 THE COURT: Go ahead. What were you going to ask?

5 BY MR. STAMATELATOS:

6 Q. I'm just asking you if the Plaza Diner installs the  
7 permanent ramp and the landing can Mr. Kreisler then enter the  
8 Plaza Diner?

9 A. He's not sure about Mr. Kreisler.

10 THE COURT: He's not sure about Mr. Kreisler.

11 THE WITNESS: I'm not sure about Mr. Kreisler --

12 BY MR. STAMATELATOS:

13 Q. Is Mr. Kreisler then --

14 THE COURT: Let's leave Mr. Kreisler out of this.

15 If A person in a wheelchair, based on your  
16 understanding of code requirements, enter the diner or would  
17 there need to be changes to the doors?

18 THE WITNESS: In theory one could enter the space.  
19 There still may need to be modifications to the doors in order  
20 to achieve code compliance.

21 THE COURT: Didn't you suggest that the vestibule  
22 needed to be changed?

23 THE WITNESS: In terms of adhering to code it does.

24 BY MR. STAMATELATOS:

25 Q. What change would have to be made to the vestibule to make

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1 it fully ADA compliant?

2 A. I admittedly did not do an item by item exhaustive code  
3 analysis to indicate which items were not code compliant and  
4 any new design would have to be coordinated with a new  
5 architect.

6 Q. And you cannot testify today as to what the size of the  
7 vestibule would have to be to make it compliant with four  
8 codes, is that correct?

9 A. It is in the code already.

10 Q. I'm asking today you cannot testify today.

11 MR. SHORE: Objection, your Honor. Can he repeat  
12 the --

13 THE COURT: Objection to him repeating the question?

14 MR. SHORE: His last question was --

15 MR. STAMATELATOS: I will rephrase it.

16 MR. SHORE: Thank you.

17 THE COURT: I didn't understand the objection.

18 Rephrase it.

19 BY MR. STAMATELATOS:

20 Q. Today, you cannot tell us what the measurement of the  
21 vestibule has to be to make it compliant with the ADA or New  
22 York City Department of Buildings, is that correct?

23 A. I can't quote it to you right now, no.

24 Q. Do you know whether adjacent to the vestibule there is any  
25 seating capacity in the Plaza Diner directly adjacent to the

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1 vestibule?

2 A. Adjacent to the vestibule is there seating?

3 Q. Yes.

4 A. I believe there was, yes.

5 Q. And can you say whether if the vestibule has to be made  
6 code compliant the diner would have to remove some of the  
7 seating which is adjacent to the vestibule?

8 A. The design of a new vestibule and the configuration of  
9 seating would be something that the design architect would  
10 coordinate with the owner and tenant.

11 Q. So, you cannot say whether the diner would lose any seating  
12 if the vestibule is made ADA compliant, am I correct?

13 A. I'm sorry. Can you repeat the question again?

14 Q. Today as you are sitting here, right now, you cannot tell  
15 this Court that if the vestibule is made code compliant which  
16 you say it is not code compliant, if it is made code compliant  
17 you cannot say whether the Plaza Diner will lose any seating  
18 capacity. We are only talking about the about vestibule which  
19 is --

20 A. Depending on the configuration of the code compliant  
21 vestibule in lieu of its current vestibule the interior could  
22 gain, lose, or reconfigure its existing seating depending on  
23 how the design architect worked that out with the owner and  
24 tenant.

25 Q. Let's move on from the vestibule.



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1 THE COURT: Have you costed that out? Do you have an  
2 estimate of what it would cost to make the vestibule code  
3 compliant?

4 THE WITNESS: There are a number of options in terms  
5 of making it code compliant and working with the configuration.  
6 There are a lot of different options so I don't, again, I  
7 didn't do a written cost analysis for --

8 THE COURT: You don't have any cost analysis for a  
9 vestibule.

10 THE WITNESS: I have worked on similar projects where  
11 we have reconfigured the interior vestibule like this and it  
12 could range between \$5,000 and \$10,000.

13 BY MR. STAMATELATOS:

14 Q. You say \$5,000 and \$10,000 for the vestibule, does that  
15 include new doors and new vestibule, new flooring?

16 A. Again, there are a number of options in terms of  
17 redesigning the vestibule. You could work with the terms that  
18 you have and reconfigure them. You can get new materials, you  
19 can upgrade materials. So, cost estimates are a little tricky  
20 in that way.

21 Q. They're tricky, they can go from \$5,000 to 50,000 to  
22 \$100,000 for a vestibule in Manhattan, correct?

23 A. You can spend an infinite amount of money on anything.

24 THE COURT: I'm looking at the vestibule in 15-1, if  
25 you can go to that exhibit if you have it. Let's give it to

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1 the witness.

2 MR. SHORE: 15-1, your Honor.

3 THE COURT: 15-1, one is interior and one is exterior.

4 I think that's the only shot. Exterior but it is a partial  
5 shot of the vestibule, right?

6 THE WITNESS: Yes.

7 THE COURT: To make the vestibule code compliant you  
8 would have to knock down a wall, is that correct?

9 THE WITNESS: Right now the outer door and the  
10 interior door are at the 90 degree angle. One could  
11 reconfigure them so that they are in succession and with the  
12 appropriate distance and have proper clear space on the side  
13 reusing existing materials and reconfiguring the seating around  
14 it. Again, there are a lot of different options that one  
15 establishes doing design.

16 BY MR. STAMATELATOS:

17 Q. We will get to the seating situation in a few minutes.

18 Let's assume the ramp is built, the landing is built, the  
19 vestibule is changed, one needs to go to the bathroom at the  
20 Plaza Diner. Is the aisle leading from the vestibule to the  
21 bathrooms code compliant?

22 MR. SHORE: Objection, your Honor. Beyond the scope  
23 of direct.

24 MR. STAMATELATOS: Actually, it is in his report, your  
25 Honor.

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1 THE COURT: I think it is in the report, isn't it.

2 MR. STAMATELATOS: Yes, your Honor.

3 THE WITNESS: Sorry, the existing vestibule, photo of  
4 the existing bathroom?

5 BY MR. STAMATELATOS:

6 Q. Let's say we have made the vestibule code compliant, now  
7 there is a diner or person in the diner, he wants to go from  
8 the vestibule to the bathroom. Do you recall that in the diner  
9 there is an aisle between the two booths?

10 A. I do believe there is an aisle in between the booths  
11 referenced in photo 15-1.

12 Q. Do you recall whether the width of that aisle is code  
13 compliant?

14 A. I do not.

15 Q. Because your report says that it is not compliant. So,  
16 assuming your report is correct because you made this report,  
17 correct?

18 A. Correct.

19 Q. To make the aisle compliant with the code what would one  
20 have to do? Do you want to look at your report; do you have it  
21 in front of you?

22 A. I do not. That would be helpful.

23 I think I indicate in my report modifications can be  
24 made to the layout of the existing --

25 Q. Look at paragraph 4 on page 3. It says seating tables?

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1 A. Correct.

2 Q. The existing fixed seating and tables do not allow the  
3 required clear floor space and accessible route through the  
4 space?

5 A. Correct.

6 Q. Does that mean that the aisle is not compliant with the ADA  
7 Code?

8 A. Correct.

9 Q. So, now to make it compliant what does the width have to be  
10 of the aisle, if you know? If you don't know you can say you  
11 don't know.

12 A. I don't know the exact numerical measurement.

13 THE COURT: How do you know it is not compliant?

14 THE WITNESS: I could tell it was too narrow but  
15 depending on the overall configuration of the space, the code  
16 dictates the width that it should be in inches. I don't want  
17 to misquote the wrong inches dimension but to me it appeared  
18 too small on site currently.

19 BY MR. STAMATELATOS:

20 Q. Let's say somebody is traversing the aisle going to the  
21 bathroom; do you agree with me that on your right there are  
22 booths and on your left there would be booths?

23 A. In the existing configuration that appears to be the case.

24 Q. On your right as you go to the bathroom there are  
25 four-seater booths, do you understand what I'm talking about?

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1 It is a booth which can seat four people, correct?

2 A. In its current configuration.

3 Q. Did you measure the width of the seat of that four-seater  
4 booth, the width of the seat? Did you measure that?

5 A. No, sir.

6 Q. From your recollection do you recall whether it is wide, is  
7 it narrow?

8 A. The width?

9 Q. Yeah, the width of the seat.

10 A. I think I indicated I didn't take an actual measurement.

11 Q. And if you walk in on your left there are the single-seat  
12 booths that can seat two people, is that correct?

13 A. I believe that is what is shown in the photo.

14 Q. If you can recollect. If you don't remember you can say I  
15 don't remember.

16 A. My recollection is that this photo appears to be the  
17 site -- the conditions on the site that I was in and if that is  
18 the current existing layout that appears correct.

19 Q. Did you look at the width of the seats in the single-seater  
20 booths?

21 A. No, sir.

22 Q. Let's say one goes through the aisle to the bathrooms; you  
23 only went in the mens bathroom, correct?

24 A. I'm sorry, I thought you were telling me.

25 Q. You only went into the mens bathroom when you inspected

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1 premises on June 15th, correct?

2 A. Correct.

3 Q. Now, you testified prior that one can incorporate grab  
4 bars, you can put the soap dispenser higher, you can move the  
5 garbage receptacle, correct?

6 A. Correct.

7 Q. Is that necessary if it is not handicap accessible, sir?

8 A. In general, making spaces more accessible and adhering to  
9 codes as best as possible is the goal.

10 Q. But if a handicapped person or wheelchair cannot enter that  
11 bathroom, does it make sense to do all of that?

12 A. Yes.

13 Q. To make it accessible for handicap people?

14 A. If I may elaborate a little?

15 Q. Sure.

16 A. The codes that are put in place are to provide access  
17 universally to as many people as possible. That is not  
18 necessarily overly prescriptive to a specific situation. For  
19 example, we have codes that say we have to make things tactile  
20 or in braille for the visually impaired in the same code that  
21 we have to have fire alarms with strobes for people who are  
22 hearing impaired. Not all disabilities are the same. These  
23 codes are universally prepared so that we provide as much  
24 access for as many people.

25 Q. So you have seen Mr. Kreisler, you have seen the size of

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1 his wheelchair. Can Mr. Kreisler get into the mens bathroom?

2 A. I don't know.

3 Q. Why do you say you do not know?

4 A. I only met Mr. Kreisler recently and I don't know the  
5 dimensions of his wheelchair.

6 Q. So, as you are sitting here today you cannot say that that  
7 bathroom is not code compliant then, correct?

8 A. No. The code is pretty prescriptive about what is required  
9 and the current conditions do not meet the code.

10 THE COURT: But based on your sort of eyeballing it,  
11 right? You didn't do any measurements as to what the clear  
12 space is in the restroom that you visited.

13 THE WITNESS: Correct. I didn't write down my  
14 numeric -- any numerical measurement but in my professional  
15 opinion as an architect and general depth perception, it does  
16 not appear to comply with codes.

17 BY MR. STAMATELATOS:

18 Q. And you cannot say today whether Mr. Kreisler can enter  
19 that bathroom in his wheelchair or not, correct?

20 A. Again, I don't know the dimensions of his wheelchair.

21 Q. You testified earlier, too, that the Plaza Diner says we  
22 need two bathrooms so we can keep our beer and liquor license.  
23 That is not totally false, correct?

24 A. I'm not sure I understand the question.

25 THE COURT: Yes. Sustained. Rephrase.

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1 Q. You testified previously that there is a local rule that if  
2 one has a liquor license two bathrooms are necessary and you  
3 said one can get away with it. Do you recall that?

4 A. I would ask to read back what I said, but I believe I  
5 indicated that I had reviewed the law, there are a lot of  
6 requirements for restrooms and there are a lot of options for  
7 waivers depending on the specific conditions.

8 Q. But one cannot assume that a waiver will be granted if one  
9 is going to knock down the two bathrooms at the Plaza Diner and  
10 construct one unisex bathroom, correct?

11 A. I'm sorry. Can you say that again?

12 Q. Let's assume the two bathrooms at the Plaza Diner are  
13 demolished and one unisex bathroom is constructed. Do you  
14 understand that scenario?

15 A. Yes.

16 Q. Does that guarantee the Plaza Diner that they will still be  
17 able to maintain their wine and beer license at the diner?

18 A. In order to accomplish -- you started your question with  
19 assuming you knocked down the bathrooms and create one  
20 bathroom.

21 Q. Yes.

22 A. That would have to be a -- that would be designed and  
23 submitted to the governmental agencies for review and approval.  
24 As part of that review process the architect that was  
25 overseeing the design would verify any of those requirements in



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1 that local law and if there were any discrepancies apply for a  
2 waiver. If a waiver was not granted for any reason, which I do  
3 not see any reason why it wouldn't, per se, then it would be  
4 constructed.

5 Q. But there is a possibility that they would not get a waiver  
6 to only have one unisex bathroom, correct?

7 A. That possibility exists.

8 Q. And you did not do any research relating to the one  
9 bathroom waiver policy at the Plaza Diner, correct?

10 A. At the Plaza Diner specifically, no.

11 Q. Now, let's assume that two bathrooms are required at the  
12 Plaza Diner so that they can conduct their business and  
13 maintain their wine and beer license. Would the existing  
14 bathrooms --

15 MR. SHORE: Objection. Calls for conclusion of law.

16 THE COURT: I haven't heard the question yet. State  
17 the question and we will see where we are at.

18 BY MR. STAMATELATOS:

19 Q. Assuming the Plaza Diner wants to make two bathrooms ADA  
20 compliant so it can keep its wine and beer license; would the  
21 existing two bathrooms have to be enlarged, firstly?

22 A. Most likely, yes.

23 Q. And by enlarging those two bathrooms, do you see the Plaza  
24 Diner losing any seating capacity?

25 A. Depending on the configuration of these new bathrooms if it

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1 were required and the configuration of other spaces by the  
2 design architect the Plaza Diner could lose, gain or just  
3 reconfigure their existing seating.

4 Q. In your professional opinion what would they do? Would  
5 they lose, gain, or stay the same?

6 A. There are a lot of options available. I haven't prepared  
7 design drawings or explored every potential scenario or option  
8 available.

9 Q. But isn't that the reason why you have not been able to do  
10 that, because you didn't go prepared to the Plaza Diner? You  
11 did not really inspect the interior of the Plaza Diner?

12 MR. SHORE: Objection.

13 THE COURT: Compound question. Ask one question.

14 BY MR. STAMATELATOS:

15 Q. You did not do a proper inspection at the Plaza Diner on  
16 June 15, 2011; is that not correct?

17 A. In order to assess feasibility, I believe I did. In order  
18 to prepare appropriate design drawings for all possible  
19 scenarios? No.

20 Q. Are you familiar that there is a counter at the Plaza  
21 Diner?

22 A. Yes.

23 Q. Do you know how many stools for people that are able to sit  
24 at the stools of the counter?

25 A. I don't recall the capacity, no.

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1 Q. Do you recall whether the counter has stools along side the  
2 front and the side?

3 A. I don't recall.

4 Q. Do you recall the height of that counter at the Plaza  
5 Diner?

6 A. Numerically in inches, I do not. I would like to consult  
7 my report.

8 Q. Sure.

9 A. I'm sorry. Your question again?

10 THE COURT: Do you recall the height of the counter.

11 THE WITNESS: No, sir.

12 BY MR. STAMATELATOS:

13 Q. Do you know whether that counter is a transaction counter?

14 A. I indicated that it was a transaction counter merely as a  
15 nomenclature. It appeared to be a counter serving several  
16 purposes.

17 Q. Purposes meaning?

18 A. There appears to be served food on top of the counter,  
19 there appear to be transactions and other activities. I'm not  
20 sure what goes on on the counter all day.

21 Q. So you don't know what type of counter it is, is that  
22 correct?

23 A. Again, for nomenclature purposes I called it a transaction  
24 counter.

25 Q. Now, regarding, we can go back to the restrooms? You said

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1 that you could move the sink and the lavatory. Where would you  
2 move it to in the mens bathroom to make it more compliant and  
3 accessible? Where would you move it to?

4 A. Again, the design options are numerous for making the  
5 restrooms code compliant. That would have to be coordinated  
6 with the design architect, owner, and tenant. There are a  
7 number of modifications you can do to the wall and to the  
8 spatial configuration of those bathrooms to achieve code  
9 compliance.

10 Q. So you would have to move the walls -- so you cannot  
11 basically move the sink and the lavatory in the existing  
12 bathroom to make it more accessible, is that correct?

13 MR. SHORE: Objection, your Honor. Compound question  
14 again.

15 THE COURT: The second question. Do you understand  
16 the second question?

17 A. Can you repeat the second question?

18 Q. Without moving the walls as the mens bathroom currently  
19 exists, is it true that even if you move the lavatory and the  
20 sink inside that restroom you cannot make it more accessible to  
21 handicap people?

22 MR. SHORE: If you understand the question.

23 A. If I understand the question correctly, without relocating  
24 the walls there are modifications you can make to make the  
25 restroom more accessible. To make the restrooms fully

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1 accessible relocations and modifications to the walls may be  
2 required.

3 Q. Because your report says, if you look at paragraph 3 on  
4 page 3, the second paragraph: Modifications can be performed  
5 to make the restroom more accessible and closer to barrier free  
6 including relocation, replacement of the existing sink and  
7 toilet, to provide code compliant fixtures with required clear  
8 floor space. You don't mention moving any walls.

9 A. Correct.

10 Q. So, am I correct in saying that wherever you move the sink  
11 and the lavatory in that mens bathroom it is not going to make  
12 it any more accessible than it presently is, correct?

13 A. No. I think that's incorrect.

14 Q. So, you are telling me --

15 THE COURT: Let him finish, let him finish.

16 THE WITNESS: As I indicated, there are modifications  
17 that you can do today to make spaces more accessible.

18 THE COURT: Can I ask a question?

19 THE WITNESS: Sorry?

20 THE COURT: So, making the mens restroom that you  
21 inspected fully code compliant, could you do that without  
22 enlarging the restroom?

23 THE WITNESS: Potentially.

24 THE COURT: Potentially. How?

25 THE WITNESS: Again, using design drawings would you

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Geoxavier - cross

1 have to map out the clear floor space required and indicate  
2 which fixtures you are going to use and how they were going to  
3 be aligned properly.

4 THE COURT: But do you know what the clear floor space  
5 is that is required?

6 THE WITNESS: Well, it is written in the code. I  
7 don't know --

8 THE COURT: And, do you know what the floor space  
9 available in the restroom, as it is currently configured, is?

10 THE WITNESS: I don't know the exact square inches or  
11 square footage, no.

12 BY MR. STAMATELATOS:

13 Q. So, you cannot tell us today how you would reconfigure that  
14 bathroom to make it compliant, is that correct?

15 A. I haven't done design drawings to indicate the options  
16 possible, no.

17 Q. And you could not tell what the cost would be to make the  
18 mens bathroom code compliant, correct?

19 A. Depending on the level of code compliance sought and the  
20 options pursued it would depend.

21 Q. But you cannot give us a figure because you do not know how  
22 you have to configure them, correct?

23 MR. SHORE: Objection, your Honor. Repetitive. Asked  
24 and answered.

25 THE COURT: But that's overruled. That is what this

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Geoxavier - cross

1 case is about, right?

2 MR. SHORE: I didn't understand the Count Three.

3 THE COURT: The question is -- I won't restate the  
4 question but you didn't do cost analysis, right, to determine  
5 how much it would cost to make the restrooms code compliant.  
6 You didn't do that?

7 THE WITNESS: A written analysis, no.

8 THE COURT: Any other analysis, written or unwritten?

9 THE WITNESS: Well, forgive me, if I can speak a  
10 little generally, with your permission?

11 THE COURT: Just answer my question.

12 THE WITNESS: Fair enough.

13 THE COURT: Have you done any cost analysis as to what  
14 the range would be to make these restrooms code compliant? Yes  
15 or no?

16 THE WITNESS: Yes.

17 THE COURT: Yes, you have.

18 THE WITNESS: Mentally, yes.

19 THE COURT: When did you do that?

20 THE WITNESS: In just asking me today I can --

21 THE COURT: Prior to today had you done any assessment  
22 of the cost?

23 THE WITNESS: I think anecdotally when it was asked of  
24 me I was able to provide that information.

25 THE COURT: My question is a simple one. Did you do a

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Geoxavier - cross

1 cost analysis prior to today of what it would take to make  
2 restrooms code compliant? Yes or no.

3 THE WITNESS: No, sir.

4 BY MR. STAMATELATOS:

5 Q. Can you testify today whether the Plaza Diner would lose  
6 any seating capacity if it had to make the counter code  
7 compliant, if the counter was not code compliant?

8 A. Depending on the design, the Plaza Diner could gain, lose  
9 or reconfigure seating in order to achieve a code-compliant  
10 transaction counter.

11 THE COURT: Have you done any assessment as to how  
12 they could -- how they might actually gain seating by enlarging  
13 the restrooms?

14 THE WITNESS: Have I done those design drawings?

15 THE COURT: Yes.

16 THE WITNESS: In order for them to gain seating? No.

17 THE COURT: What is your basis for saying they could  
18 gain seating? Because theoretically it is possible as one of  
19 three outcomes; gain, lose, maintain? Or because you have  
20 looked at the space and have done an assessment as to whether  
21 or not you might actually gain seating after enlarging the  
22 restroom?

23 THE WITNESS: Forgive me, sir. You are asking my  
24 opinion?

25 THE COURT: But your opinion has to be based on



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Geoxavier - cross

1 something, right, Mr. Geoxavier?

2 THE WITNESS: Correct.

3 THE COURT: You can't be sort of hurling it out there.  
4 So, what is your basis for the opinion that the seating could  
5 be increased after you have increased the size of the  
6 restrooms?

7 THE WITNESS: General assessment of the spatial  
8 configuration of the entire space and their current  
9 configuration and potential design options for the future.

10 THE COURT: You are saying if they did an entire  
11 reconfiguration of all their seating and the restroom perhaps  
12 you could take out the counter and add tables and maybe you  
13 would have more seats?

14 THE WITNESS: Theoretically, if the entire space was  
15 gutted, let's say, and the restrooms, kitchen, service spaces  
16 all fixed seating and the entry were completely reconfigured,  
17 it is possible at the end of the day you would have an outcome  
18 with fully accessible entrance, fully accessible room,  
19 appropriate transaction counter, and perhaps even more seating.

20 THE COURT: Have you done any assessment as to what  
21 that would cost?

22 THE WITNESS: No, sir.

23 THE COURT: Do you think it would be \$3,000 to  
24 \$10,000?

25 THE WITNESS: No, sir.

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Geoxavier - cross

1 THE COURT: Do you think the restaurant would have to  
2 be closed down for a significant period of time when you made  
3 those renovations?

4 THE WITNESS: Most likely.

5 THE COURT: Most likely? You think it can be done  
6 without?

7 THE WITNESS: You are asking me the scenario if they  
8 gain seating then?

9 THE COURT: You are the one that has posited that as a  
10 possibility so I'm asking your basis for saying why you think  
11 it would gain seating. And you are suggesting that they could  
12 gain seating if they basically gut renovated the entire  
13 facility?

14 THE WITNESS: Yes, sir.

15 THE COURT: Next.

16 BY MR. STAMATELATOS:

17 Q. Are you aware that between the counter stools and the  
18 booths there is a wall which separates the counter seating area  
19 and the booth area? Are you familiar with that?

20 A. I believe there is a rail indicated in one of the photos,  
21 15-1.

22 Q. Do you know what the distance is between the booths and the  
23 stools at the counter?

24 A. I do not.

25 THE COURT: Can I interrupt for just a second?

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Geoxavier - cross

1           We have a number of people who are here for the  
2           sentencing we have at 11:00 which is fine. You are welcome to  
3           stay. I have a bench trial going in a civil matter that we are  
4           going to go pretty close to 11:00.

5           Sorry about that.

6           BY MR. STAMATELATOS:

7           Q. You have reviewed the expert report of Peter Georgopoulos,  
8           correct?

9           A. Correct.

10          Q. Is there anything in that report that you disagree with  
11          today?

12          A. Yes.

13          Q. If you can tell me which items you disagree with?

14          A. May I have a copy?

15                 MR. SHORE: You have a copy.

16                 THE COURT: I have 14.

17                 THE WITNESS: Forgive me. Do you want me to go  
18          through the whole report and tell you if there are any items  
19          that I disagree with?

20          BY MR. STAMATELATOS:

21          Q. Yes.

22                 Your attorney mentioned before there were some -- the  
23          liquor license issue. Let me know if there is anything else.  
24          It is two and a half pages, take a quick look.

25          A. At the top of the second page Mr. Georgopoulos indicates

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Geoxavier - cross

1 that the Department of Transportation official said no permits  
2 are being given in that area for permanent structures.

3 Q. And --

4 THE COURT: Let him finish.

5 A. I disagree. I have not seen any statement from the  
6 Department of Transportation and am unaware of any rules that  
7 indicate that permanent structures are not permitted in that  
8 area.

9 He indicates Second Avenue sidewalk in that area is  
10 narrow. I guess that's a relative determination. I think it  
11 is actually rather adequately sized considering there are much  
12 smaller, narrower sidewalks in other parts the city.

13 He indicates telephone booths and permitted street  
14 vendors are in front of the entrance. That's a statement.

15 Q. Before you move on with that, did you see those telephones  
16 booths he is referring to?

17 A. I don't recall the telephone booths in front of the  
18 entrance.

19 Again, it is just a statement of fact. I would  
20 presume that Mr. Georgopoulos is stating that these telephone  
21 booths and permitted street vendors are perhaps obstructions to  
22 a potential ramp. If that's the conclusion being drawn I would  
23 disagree with that, telephone booths are relocatable as are  
24 street vendors.

25 Making a permanent structure will impede the flow of

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Geoxavier - cross

1 pedestrian traffic and could conflict with access issues of  
2 other persons with disabilities including the blind and those  
3 requiring walking canes. I guess I would generally disagree  
4 with that statement. There are plenty of instances where there  
5 are ramps that have -- that are appropriately designed, that  
6 don't provide an obstruction to other disabled people. A  
7 permanent ramp at the corner of the building will not be  
8 permitted. Again, I guess I generally disagree with that. I  
9 think ultimately we would have to see what the government  
10 agencies with jurisdiction would say. I don't foresee --

11 Q. But you don't know because --

12 THE COURT: Wait.

13 THE WITNESS: You have --

14 THE COURT: Stop. Stop. Okay? She can only write  
15 down when one person is speaking. You have to let him finish.  
16 You can't interrupt, okay?

17 THE WITNESS: My opinion is that a ramp at the corner  
18 of the building could be installed and would be permitted. I  
19 have seen nothing, to my knowledge, that would indicate that it  
20 would not.

21 Do you want me to go through the report?

22 BY MR. STAMATELATOS:

23 Q. If there is anything else that you disagree with, mention  
24 it, otherwise if there is nothing else. That's fine with me.

25 A. Again, on the same page Mr. Georgopoulos indicates the

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Geoxavier - cross

1 subject premises must contain two bathrooms according to Local  
2 Law 58. I guess I would be concerned as to the interpretation  
3 of that local law. The two of us may actually disagree on that  
4 so I would like to know which portion of the reference standard  
5 he is considering is applicable in this scenario. We may  
6 disagree on that.

7 He indicates to modify the bathrooms as proposed by  
8 the plaintiffs would not be readily achievable given  
9 conflicting New York City building code requirements requiring  
10 a restroom for each gender. Again, I think we may disagree on  
11 that.

12 He indicates the cost of altering the bathrooms would  
13 exceed \$13,000. Without an actual design or a proposed design  
14 I think it's premature to give an actual dollar figure. I  
15 mean, we can talk about a range or certain options but we may  
16 ultimately disagree on the cost of these modifications.

17 THE COURT: Okay. Next question.

18 Q. If we can just go back to the permanent ramp because I  
19 didn't ask you, we were discussing about a permanent ramp being  
20 constructed on Second Avenue. You also mentioned that a  
21 permanent ramp could be constructed on 56th Street adjacent to  
22 the diner, correct?

23 A. Potentially, yes.

24 Q. Would that entail the similar layout and construction as a  
25 permanent ramp on Second Avenue?

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Geoxavier - cross

1 A. It could be similar. There are a number of design options.

2 Q. No. What I mean is would it be maybe a small ramp or would  
3 it be basically the same ramp that would have to be constructed  
4 if it was constructed on Second Avenue?

5 A. Again, if there is additional space available on 56th  
6 Street the design could change.

7 Q. Did you look at the width of the sidewalk on 56th Street?

8 A. I did not measure the sidewalk on 56th Street, no.

9 Q. Did you do any research whether The city or the Department  
10 of Transportation would allow a permanent ramp on 56th Street?

11 A. Specifically, no.

12 MR. STAMATELATOS: If I can have one moment, your  
13 Honor?

14 THE COURT: Okay.

15 MR. STAMATELATOS: I have no further questions.

16 THE COURT: Let's take a break here. Do you want to  
17 do some redirect I assume, Mr. Shore? I shouldn't assume,  
18 perhaps, but do you want to?

19 MR. SHORE: I have a few questions I'm considering.  
20 Would you like me to do them now?

21 THE COURT: Well, I was going to take a break now and  
22 prepare for the sentencing that I have scheduled for 11:00. If  
23 you have one or two then I think maybe I would let you do this  
24 now because it is more efficient to finish with the witness  
25 rather than have him wait around. But if it is more than one

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Geoxavier - cross

1 or two, then I think that might be tricky.

2 MR. SHORE: It would just be one or two.

3 THE COURT: Okay.

4 REDIRECT EXAMINATION

5 BY MR. SHORE:

6 Q. You stated that a permanent ramp could be installed on  
7 Second Avenue to provide access to the plaintiff in front of  
8 the Plaza Diner located at 56th and Second Avenue diner, is  
9 that correct?

10 A. Yes, sir.

11 Q. What is the proximate cost estimate of that?

12 A. For a scenario that I'm envisioning I believe I said  
13 between 3,000 and 10 thousand before.

14 MR. SHORE: Yes, you did.

15 THE COURT: That's just for the ramp?

16 THE WITNESS: Correct.

17 THE COURT: Doesn't involve the reconfiguration of the  
18 restroom?

19 THE WITNESS: Correct.

20 THE COURT: All right.

21 BY MR. SHORE:

22 Q. The last question is, if the restaurant isn't fully  
23 accessible, are there other things that the restaurant can do  
24 to make it more accessible even if, for example, even if the  
25 vestibule isn't fully compliant?



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Geoxavier - redirect

1 MR. STAMATELATOS: I object, your Honor. That was  
2 previously asked in Mr. Shore's direct.

3 THE COURT: I will allow it. Overruled.

4 BY MR. SHORE:

5 Q. If a permanent ramp was installed and the vestibule is not  
6 completely compliant and the plaintiff would be able to make it  
7 through the vestibule, would that be allowable under applicable  
8 law?

9 THE COURT: Are you an expert in the applicable law as  
10 to what would be allowable short of full compliance? Is that  
11 an area of expertise for you?

12 THE WITNESS: In a way, yes, in that I have worked  
13 with existing -- worked with clients who are existing buildings  
14 where they are making some modifications towards accessibility  
15 but they're not making the entire facility fully code  
16 compliant. And there are laws that indicate that you are only  
17 forced to do so much, some is allowed, some is not.

18 The short answer is yes. Can you make certain  
19 modifications to make a facility more accessible without doing  
20 the entire thing? Yes. That is generally allowed.

21 MR. SHORE: Thank you. No further questions.

22 THE COURT: Do you want recross?

23 MR. STAMATELATOS: No, your Honor.

24 THE COURT: All right. So, Mr. Geoxavier, you are  
25 excused.

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Geoxavier - redirect

1 THE COURT: Are you planning more?

2 MR. STAMATELATOS: No, your Honor.

3 THE COURT: Thank you, Mr. Geoxavier. Thank you.

4 Let me say to the parties, I will take a sentencing  
5 that will go at least an hour, perhaps longer, so why don't you  
6 come back here at 12:15. All right? You may use the cafeteria  
7 or whatever else.

8 MR. STAMATELATOS: Your Honor, may we use the witness  
9 room perhaps, if that's fine with you?

10 THE COURT: That's fine. Okay.

11 (Recess)

12 THE COURT: We will now resume with the plaintiff's  
13 case. So, Mr. Shore, who are you calling next?

14 MR. SHORE: The plaintiff rests.

15 THE COURT: You rest. You are not calling the  
16 defense?

17 MR. SHORE: No, I --

18 THE COURT: I thought you said you were going to call  
19 the defense expert as well.

20 MR. SHORE: Defense counsel has indicated he is going  
21 to call his experts.

22 THE COURT: All right. So who are you planning to  
23 call, Mr. Stamatelatos?

24 MR. STAMATELATOS: I have Mr. Georgopoulos, the  
25 architect, and Mr. Gentile who is the accountant for the Second

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1 Avenue Diner, your Honor.

2 THE COURT: All right. So, who do you want to call  
3 first?

4 MR. STAMATELATOS: We will do the accountant since he  
5 has to leave, your Honor. That's fine.

6 THE COURT: Have a seat right over here. We are going  
7 to go until 1:00 and then I have a meeting until 2:00 -- sorry  
8 about that -- and maybe we can finish -- Mr. Gentile is it?

9 THE WITNESS: Yes.

10 THE COURT: Hopefully we can finish you by 1:00. We  
11 will see.

12 Could you stand and raise your right hand?

13 DAVID GENTILE,

14 called as a witness by the Defendant,

15 having been duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. STAMATELATOS:

18 Q. Mr. Gentile, are you an accountant?

19 A. I am.

20 Q. How long have you been an accountant for?

21 A. 25 years.

22 Q. Are you licensed in New York State?

23 A. As a CPA, yes.

24 Q. How many years are you licensed in New York as a CPA?

25 A. About 10 years.

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Gentile - direct

1 Q. What is your area of expertise in the CPA field?

2 A. I'm a general practitioner.

3 Q. Do you do restaurants?

4 A. Yes.

5 Q. Income taxes and tax related issues for restaurants and  
6 diners?

7 A. I do.

8 Q. Are you the accountant for the Second Avenue Diner Corp.  
9 which operates out of 1066 Second Avenue in Manhattan?

10 A. I am.

11 MR. STAMATELATOS: May I approach the witness, your  
12 Honor?

13 THE COURT: Yes. You don't have to ask.

14 MR. STAMATELATOS: If you can look at Defendant's  
15 Exhibit 5, 6, 7 and 8?

16 THE COURT: 5 through 8, you said?

17 MR. STAMATELATOS: Yes. Those are tax returns for  
18 J.J.N.K. Inc.

19 I apologize, your Honor. Plaintiff's Exhibit 6 is the  
20 2010 tax return.

21 THE COURT: Defendant's Exhibit 5 through 8 and  
22 Plaintiff's Exhibit 6.

23 MR. STAMATELATOS: Is the 2010 tax return.

24 THE WITNESS: 2008. It is different here. Exhibit 6  
25 is a 2008 tax return.

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Gentile - direct

1 THE COURT: No. I think we are talking about  
2 Plaintiff's Exhibit 6 and Defendant's Exhibit 6.

3 THE WITNESS: Sorry.

4 THE COURT: That's all right.

5 We have the tax returns for those, for the relevant  
6 years.

7 MR. SHORE: They're offered into evidence as  
8 Defendant's Exhibit as well, right?

9 THE COURT: I'm not sure if 8 is in as a defendant's  
10 exhibit. It is in as plaintiff's exhibit. In any event, I  
11 have it. Let's go.

12 MR. STAMATELATOS: Thank you.

13 BY MR. STAMATELATOS:

14 Q. If you can look at Plaintiff's Exhibit 6 which is a 2010  
15 tax return for Second Avenue Diner Corp.?

16 A. Yes.

17 Q. Could you review that return, please?

18 A. I'm familiar with the return.

19 Q. Can you tell the Court who prepared this return?

20 A. Myself.

21 Q. And can you tell the Court what the gross sales for the  
22 Second Avenue Diner were for the year 2010?

23 A. \$615,799.

24 Q. Did the Second Avenue Diner operate at a profit or at a  
25 loss for the year 2010?

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Gentile - direct

1 A. At a profit.

2 Q. If you can look at --

3 THE COURT: What was the profit?

4 THE WITNESS: \$23,383.

5 THE COURT: That's the calendar year 2010?

6 THE WITNESS: Yes, sir.

7 BY MR. STAMATELATOS:

8 Q. If you can look at the last page of that report it should  
9 indicate 9.1 at bottom of the page?

10 A. Yes.

11 Q. Which at the top installation, alternative minimum tax  
12 depreciation report?

13 A. Yes.

14 Q. If you can look at what is noted as no. 1 leasehold  
15 improvements as a cost or basis of \$43,500?

16 A. Yes.

17 Q. Can you explain to the Court what that is?

18 A. In October of 2003 there was an acquisition of a  
19 previous -- this is based on my recollection on conversations  
20 with the taxpayer --

21 MR. SHORE: Objection. Hearsay.

22 THE COURT: Well, I just want to understand what this  
23 item is on the return. Presumably this is a return that you  
24 prepared?

25 THE WITNESS: Yes, I did.

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Gentile - direct

1 THE COURT: But it is all based on information that  
2 was provided by the taxpayer, correct?

3 THE WITNESS: Yes. That's correct, your Honor.

4 THE COURT: So you're explaining the first item,  
5 leasehold improvements?

6 THE WITNESS: Yes.

7 THE COURT: 10/1/03. What was your understanding as  
8 to what that stands for, what that \$43,500 amount is?

9 THE WITNESS: That amount was as part of the  
10 acquisition, the acquisition which is the purchase of the  
11 existing -- the business that was existing, there was an  
12 allocation of those assets and as part of the allocation of  
13 those assets \$43,500 was the fair market value of the leasehold  
14 improvements at that time back on October 1, 2003.

15 THE COURT: So, leasehold improvements from when to  
16 when?

17 THE WITNESS: That would be at that date the value of  
18 those improvements in that location.

19 THE COURT: In 2003 Second Avenue Diner Corp.  
20 purchased the business that was operating as the Plaza Diner,  
21 correct?

22 THE WITNESS: Correct.

23 THE COURT: I forget who they bought it from. Do you  
24 remember?

25 THE WITNESS: No.

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Gentile - direct

1 MR. STAMATELATOS: There is a document, if I may  
2 introduce it.

3 THE COURT: I don't think it matters.

4 In any event, this \$43,500 amount here relates to the  
5 cost of -- the value of improvements made?

6 THE WITNESS: No.

7 THE COURT: So, what is it?

8 THE WITNESS: So, when the asset was negotiated at  
9 fair market value for the purchase price, I believe the  
10 purchase price of the business was approximately \$60,000 and of  
11 that \$60,000 we allocate for accounting purposes what makes up  
12 the \$60,000 because they have certain values for tax purposes.

13 THE COURT: Okay.

14 THE WITNESS: Of that, a portion of the value was  
15 leasehold improvements of a total purchase price of 60. We  
16 allocated or it was allocated at \$43,000 for, quote unquote,  
17 leasehold improvements or improvements to the property.

18 THE COURT: And, did you have an understanding as to  
19 what the improvements were?

20 THE WITNESS: What generally they are in a diner,  
21 because I service many diners, that would probably be kitchen.

22 THE COURT: In this particular case --

23 THE WITNESS: In this particular case?

24 THE COURT: -- what the 43,500 refers to.

25 THE WITNESS: Specifically, no, I would not know.



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Gentile - direct

1 THE COURT: Okay.

2 Go ahead. Sorry.

3 BY MR. STAMATELATOS:

4 Q. Now, if the Second Avenue Diner has to make some  
5 alterations, renovations so that it is made compliant with the  
6 Americans with Disabilities Act and it loses some of the  
7 seating capacity, would that affect the business of the Second  
8 Avenue Diner at all?

9 A. I want to make sure I understand the question.

10 So, if they were losing seating capacity would --

11 Q. Let me rephrase it. I will withdraw that.

12 Do you know how many seats there are presently in the  
13 Second Avenue Diner?

14 A. Approximately 50 seats.

15 Q. So, let's assume that they have to make renovations so it  
16 is compliant with the American with Disabilities Act Code, they  
17 would have to remove some of the seating. Would that impact on  
18 the business of the Second Avenue Diner doing business as Plaza  
19 Diner?

20 A. Yes.

21 Q. Can you tell the Court how that would impact the Plaza  
22 Diner?

23 A. How a restaurant works, generally, I have been to this  
24 restaurant a few times, there is limited seating capacity of a  
25 restaurant of 50 seats. If you remove seats then the busy

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Gentile - direct

1 times and generally the business runs as a busy breakfast,  
2 lunch and/or dinner, so if you are removing seats then gross  
3 sales will come down because people need to sit in a booth or  
4 table and eat and if you have limited seating you have limited  
5 people paying.

6 THE COURT: Well, can you determine how much gross  
7 sales would come down if you lost five seats?

8 THE WITNESS: Based on my conversation, given that  
9 there is only 50 seats in the restaurant, it would be safe to  
10 say that between 10 percent -- five seats could be 10 percent  
11 of total seating capacity.

12 THE COURT: Would that mean 10 percent of total  
13 profits, total income?

14 THE WITNESS: Given -- and this is the question that I  
15 had looked at prior -- given that the business generally  
16 generates the bulk of its revenue during breakfast, lunch and  
17 dinner, those windows of time are limited where people are  
18 actually limited so I would not say a flat 10 percent but it  
19 could be as high as 7 percent or even 8 percent given that,  
20 because it is only 50 seats and if you would go there at 5:30,  
21 6:00, the place would be busy, there may be a line outside.

22 THE COURT: But there are other times in the day where  
23 they're generating income and they're not approaching capacity  
24 for the 50 seats, right?

25 THE WITNESS: That's correct. But generally in the

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Gentile - direct

1 business of and given my experience, certain businesses could  
2 do business throughout the day and certain businesses just have  
3 their, where they have a high capacity. This store, it is  
4 based on what I have seen and based on my understanding, this  
5 has a high capacity only during certain periods of time during  
6 the day given its location because of the foot traffic and  
7 people going for lunch. So, if you lose seating capacity  
8 during those busy times, the store is empty between 10:00 and  
9 say 11:30, empty, and then you'll -- I'm not saying this store  
10 but generally some restaurants would be empty and also between  
11 2:00 p.m. and 5:00 p.m. the store would be empty, not a soul in  
12 the store, but as if the clock went off at 5:30 people come in  
13 and they run until 7:00 or 8:00 and it empties out again.

14 So, some of the these businesses have cycles which is  
15 who you lose capacity when there is limited capacity. That  
16 could be a phenomena of limiting the number of seats in a store  
17 of this size.

18 THE COURT: But it is not simply a matter of saying 5  
19 seats is 10 percent of total capacity so it would be 10 percent  
20 less revenue. You can't say that, right? It has to be less  
21 than that, right?

22 THE WITNESS: Generally, yes, but in some cases it  
23 might be -- and I have been involved and the accountant for  
24 stores where I have actually seen not necessarily, but business  
25 is so concentrated to one specific time that if you don't have

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Gentile - direct

1 enough servers behind the counter and you can't service those  
2 customers then you will lose those customers because there is  
3 limited capacity to serve the customers within their window of  
4 time to eat.

5 THE COURT: All right. Go ahead.

6 BY MR. STAMATELATOS:

7 Q. What would the loss be? Would it be profit or would it be  
8 a loss in the sales?

9 A. Well, generally speaking, and say that if we are saying  
10 five seats making 10 percent of the total capacity, say we have  
11 a 50 percent where it impacts the store at, I'd say 5 percent,  
12 it would be, of sales.

13 Q. Of sales?

14 THE COURT: Of gross 5 percent after of the  
15 six-hundred-something-thousand.

16 THE WITNESS: That's being conservative to be  
17 cautious, so 10 percent would be the max and 5 percent would be  
18 lowest but the --

19 THE COURT: 5 percent off of 16, right?

20 THE WITNESS: Yes.

21 THE COURT: So that's basically about 30 grand, right?

22 MR. SHORE: Yes.

23 BY MR. STAMATELATOS:

24 Q. How about the expenses? Let's say the Plaza Diner loses 5  
25 percent of its gross sales, will it lose -- would it still have

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Gentile - direct

1 the same expenses basically?

2 A. Well, you have both bearable cost and you have fixed cost  
3 in a business such as this so the variable costs are the cost  
4 of goods sold, the food product that you are actually servicing  
5 or selling. Fixed cost in a store similar to this would be the  
6 labor cost of running the kitchen. At a certain level at this  
7 minute changed in business and because this is not a very busy  
8 store based on this average, about \$12,000 a week in sales, the  
9 fixed costs don't change. The rent wouldn't go down. The  
10 utility bill wouldn't go down because the walk-in box is the  
11 same, the lights are still on in the store. I mean, some of  
12 the variable costs, food cost would go down, supplies would go  
13 down, but that generally is, in this business, makes up about  
14 20, 25 percent of total sales. So, on \$30,000 loss in business  
15 that's about \$7,500 indirect cost so you would lose about  
16 \$22,500 to the bottom line.

17 THE COURT: Okay.

18 THE WITNESS: And also the ability to bulk purchase,  
19 it could actually be higher than that because when you are  
20 buying in bulk you get discount in pricing. So, if you are not  
21 buying in bulk it might be higher than that.

22 BY MR. STAMATELATOS:

23 Q. So, if I understand you correctly, the \$43,500 for  
24 leasehold improvements which says date acquired October 1,  
25 2003, was not that Second Avenue Diner purchased and made

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Gentile - direct

1 improvements to the store, is that correct?

2 A. That's correct. That was part of the acquisition.

3 Q. It is part of the prior business and was allocated for tax  
4 purposes?

5 MR. SHORE: Objection. Asked and answered.

6 THE COURT: Well, I'm not sure I understood it so I  
7 will allow that. I overruled the objection but so I'm clear,  
8 you don't know what those improvements were? You prepared this  
9 return but you don't know what the 2003 leasehold improvements  
10 were that are \$43,500?

11 THE WITNESS: That's correct.

12 THE COURT: So it could be bathroom renovation in  
13 1998?

14 THE WITNESS: No, it could not.

15 THE COURT: It could not.

16 THE WITNESS: It could very well be. I'm sorry, but  
17 generally just to clarify only that I know the business in  
18 general and the accounting terminology for leasehold  
19 improvements. The classification of leasehold improvements is  
20 purely classification to designate the purchase price so if  
21 there was a fair -- if \$60,000 is the purchase price and then  
22 we have to designate a portion of that purchase price toward  
23 different things of that value in the store, we would bulk  
24 whatever the improvements that the store would be as compared  
25 to a blank store with no lighting, no kitchen. So, in essence,

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Gentile - direct

1 we look at that at that present time and we allocate a portion  
2 of \$60,000 purchase price towards leasehold, towards covenant  
3 not to compete, goodwill, stuff of that nature but the  
4 leasehold improvements would include stuff that they had.

5 THE COURT: A fancy antique cash register that gave it  
6 character?

7 THE WITNESS: Yes.

8 THE COURT: Or a mirror behind the counter?

9 THE WITNESS: Or ventilation or bathroom fan.

10 THE COURT: But you don't know what improvements were  
11 considered to tally up \$43,500?

12 THE WITNESS: No, but that would be the store as you  
13 see it.

14 THE COURT: All right.

15 BY MR. STAMATELATOS:

16 Q. So, am I correct then when you come with a 5 percent loss  
17 of the seating capacity, the Plaza Diner would lose gross sales  
18 it would have, is that correct, the assumption that I would  
19 make?

20 A. That's correct.

21 MR. STAMATELATOS: I have no further questions, your  
22 Honor.

23 THE COURT: All right.

24 Mr. Shore?

25 CROSS EXAMINATION

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Gentile - cross

1 BY MR. SHORE:

2 Q. Is it true that \$17,500 there are in unknown changes to the  
3 premises at Second Avenue Diner Corp. that you're unaware of  
4 from 2003 on the no. 1 leasehold improvements?

5 THE COURT: Wait. I can't hear you.

6 Q. Under item 1, leasehold improvements it states \$43,500.  
7 I'm asking him for clarification. He stated that \$43,500 he  
8 did not know what those were for so I'm asking for  
9 clarification. Is that correct, you don't know what exactly  
10 that money went to?

11 A. The \$43, 500?

12 Q. Yes.

13 A. I know it went to leasehold improvements. The detail of  
14 leasehold improvements I would not know.

15 THE COURT: Do you just not remember now? Is there a  
16 document someplace that you relied on to come up with \$43,500?

17 THE WITNESS: Yes, there is. I don't have a document  
18 but there is a, on the purchase when the -- there was a bulk  
19 sale that was filed with the State. There was an allocation of  
20 the assets of the purchase price and that the allocation of  
21 that, the sale between the attorneys that handled the sale,  
22 they allocated \$43,500 toward the leasehold improvements of the  
23 property.

24 THE COURT: Mr. Shore?

25 BY MR. SHORE:



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Gentile - cross

1 Q. You stated the gross sales would reduce as well as the cost  
2 of the goods if five seats were removed?

3 A. Yeah. Generally, yeah. There is a cost per meal in  
4 preparing a meal and that would be in the cost of goods sold  
5 section as we talked about.

6 Q. How many diners or restaurants have you dealt with? Or how  
7 many restaurants and diners have you been accountant for?

8 A. In my career?

9 Q. Yes.

10 A. At least a hundred.

11 THE COURT: A hundred. Wow.

12 Q. Do you actually purchase goods for the restaurants and  
13 diners?

14 A. I've owned restaurants and diners myself.

15 Q. With regards to the Plaza Diner, did you review their books  
16 and records?

17 A. Second Avenue Corp.?

18 Q. Second Avenue Diner.

19 A. Yes.

20 Q. Did you read their books and records?

21 A. Of course.

22 Q. Do you have them in your possession?

23 A. No.

24 Q. Who has those records?

25 A. The taxpayer. I would imagine the taxpayer would have

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Gentile - cross

1 them. I'm not certain.

2 Q. Do you know if the Second Avenue Diner Corp. accepts only  
3 credit cards or do they accept cash?

4 A. I don't -- I don't --

5 Q. You don't know the answer to that question?

6 A. No.

7 Q. You said you have been inside the Second Avenue Diner Corp.  
8 before?

9 A. Yes.

10 Q. You stated that the removal of five seats would result in a  
11 loss of sales and revenue to the property?

12 A. Given my understanding of how that business specifically  
13 runs being capacity limited at times during the day, that it  
14 would have an impact on sales.

15 Q. When you first walked into the Plaza Diner, what is the  
16 first thing you see?

17 A. There is a booth.

18 Q. How many doors do you have to go through to get to the  
19 booth?

20 A. You walk in the front door and you go to the right and  
21 there is a booth right in front of you.

22 Q. Is there a second door?

23 A. You walk in. To the best of my recollection I haven't been  
24 there in about a year.

25 THE COURT: This is beyond the scope. He is

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Gentile - cross

1     testifying, really, about tax returns, not about the layout of  
2     the restaurant.

3             MR. SHORE: Well, he did state that if, you know, five  
4     seats were removed --

5             THE COURT: Right.

6             MR. SHORE: -- then it would result in a loss of --

7             THE COURT: Clearly he talked about that. You can ask  
8     him about how he comes to that conclusion but I'm not sure what  
9     the layout of the restaurant has to do with it.

10     BY MR. SHORE:

11     Q. Are you aware there is a vestibule that is at the Plaza  
12     Diner?

13     A. I recall, yes.

14     Q. So, if that vestibule were removed the restaurant would not  
15     lose any seating. Is that a possibility?

16             MR. STAMATELATOS: Objection, your Honor. He is not  
17     an expert in that field, your Honor.

18             MR. SHORE: He is not expert in removal of seating  
19     either.

20             THE COURT: He was asked about removal of seating and  
21     how it would affect revenue. That is he is qualified to  
22     answer. I don't think he is qualified to answer whether or not  
23     you could restore seating or add seating based on taking out a  
24     vestibule. That's for some other expert but not this guy. No  
25     offense, Mr. Gentile, but unless --

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Gentile - cross

1 THE WITNESS: None taken, your Honor.

2 THE COURT: Are you an architect also?

3 THE WITNESS: No.

4 THE COURT: Any construction experience?

5 THE WITNESS: No.

6 BY MR. SHORE:

7 Q. What diners do you own?

8 A. No diners, not now. I have had Flaming Embers, places on  
9 Bell Boulevard, Murphy's. I own a place right now called Pure  
10 in Whitestone, J&A Health Trends which is a food store. I had  
11 a place in Brooklyn on Willoughby Street which was a diner-type  
12 restaurant. The one on 86th Street was diner-type.

13 THE COURT: Flaming embers?

14 THE WITNESS: Yes. 66th between Second and Third. It  
15 was a long time ago, 2005.

16 BY MR. SHORE:

17 Q. You estimate 7 to 8 percent of the gross sales would  
18 decrease, that's just an estimate? You haven't done any  
19 financial analysis?

20 A. I have not done financial analysis.

21 MR. SHORE: No further questions.

22 THE COURT: Any redirect?

23 MR. STAMATELATOS: No redirect, your Honor.

24 THE COURT: Okay, Mr.Gentile. Thank you.

25 THE WITNESS: Thank you.

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Gentile - cross

1 THE COURT: You may step down.

2 Why don't we start the next witness.

3 MR. STAMATELATOS: We can, your Honor.

4 Mr. Georgopoulos.

5 THE COURT: Okay.

6 PANAGIS GEORGOPOULOS,

7 called as a witness by the Defendant,

8 having been duly sworn, testified as follows:

9 THE COURT: You may proceed, Mr. Stamatelatos.

10 DIRECT EXAMINATION

11 BY MR. STAMATELATOS:

12 Q. Mr. Georgopoulos, if you can look at this document that I  
13 place in front of you?

14 THE COURT: What is the number?

15 MR. STAMATELATOS: Defendant's Exhibit 14, your Honor.

16 THE COURT: It is in evidence?

17 MR. STAMATELATOS: Yes, your Honor.

18 THE COURT: Okay.

19 Q. Is that a report that you generated dated June 29, 2011?

20 A. Yes, it is.

21 Q. And does that report pertain to an inspection that you did  
22 at the Plaza Diner located at 1066 Second Avenue, New York?

23 A. Yes.

24 Q. Are you an architect?

25 A. Yes, I am.

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Georgopoulos - direct

1 Q. Are you licensed in the State of New York?

2 A. Yes, I am.

3 Q. How long have you been licensed in the State of New York?

4 A. I've been licensed 30 years. More than 30 years.

5 Practicing 40 years.

6 THE COURT: Practice what?

7 THE WITNESS: Practicing 40 years. I'm 30 years  
8 resident.

9 THE COURT: Keep your voice up.

10 THE WITNESS: Yes.

11 BY MR. STAMATELATOS:

12 Q. Do you specialize in any particular areas in architecture?

13 A. I do stores, residential as well as single family homes,  
14 but mainly stores and restaurants.

15 Q. Can you tell us when you visited the Plaza Diner what was  
16 the purpose of your visit to the Plaza Diner?

17 A. I was asked to evaluate existing conditions --

18 Q. Evaluate people?

19 A. -- with reference to handicap accessibility.

20 THE COURT: When did you go?

21 THE WITNESS: I'm sorry?

22 BY MR. STAMATELATOS:

23 Q. When did you go?

24 A. In June, when I prepared this report.

25 THE COURT: How long before this report?

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Georgopoulos - direct

1 THE WITNESS: It was about a week before.

2 THE COURT: All right. You just went the one time or  
3 you went multiple times?

4 THE WITNESS: One time I went there, your Honor.

5 THE COURT: For how long were you there?

6 THE WITNESS: I was there for a couple of hours.

7 BY MR. STAMATELATOS:

8 Q. And let me ask you this: There is no ramp at the Plaza  
9 Diner, permanent ramp, correct?

10 A. No, there isn't.

11 Q. There is a step at the entrance of the Plaza Diner?

12 A. Yes, there is.

13 Q. Can you tell us what is the height of that step?

14 A. Approximately eight inches.

15 Q. Now, the plaintiff is seeking that the Plaza Diner install  
16 a permanent ramp either on the Second Avenue side of the diner  
17 or the 56th Street side of the diner. Is that possible?

18 A. That is not possible.

19 Q. Can you tell us Court why that is not possible?

20 THE COURT: Not possible?

21 THE WITNESS: It is not possible.

22 THE COURT: It is impossible to build a ramp?

23 THE WITNESS: Impossible.

24 THE COURT: I'm all ears. Why is it impossible?

25 BY MR. STAMATELATOS:

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Georgopoulos - direct

1 Q. If you can tell the Court why it is not possible?

2 A. Due to the construction of the new subway train there will  
3 be an exit/entrance to the train on 55th Street. The transit  
4 authority does not permit permanent ramps.

5 THE COURT: They do not permit what permanent ramps?

6 THE WITNESS: Permanent ramps in that location.

7 THE COURT: How do you know this?

8 THE WITNESS: Specifically there was revocable consent  
9 by the Department of Transportation clearly indicating that  
10 there is no ramps, permanent ramps permitted within 13 feet of  
11 the corner. Within 13 feet of the corner.

12 THE COURT: The entrance is going to be on 55th or  
13 56th?

14 THE WITNESS: The present address on Second Avenue  
15 now?

16 THE COURT: No. I'm saying the entrance to the  
17 subway.

18 THE WITNESS: The entrance to the subway is on 55th.

19 THE COURT: It is on 55th.

20 THE WITNESS: It is going to be on 55th but the  
21 station extends underneath this sidewalk. The front wall of  
22 the building, it's the wall of the subway station.

23 THE COURT: How do you know this?

24 THE WITNESS: I investigated that.

25 THE COURT: Well, what steps did you take to



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Georgopoulos - direct

1 investigate it?

2 THE WITNESS: I went to the Transit Authority to find  
3 the records of that.

4 THE COURT: Find what records?

5 THE WITNESS: Of the new subway system that is being  
6 constructed as of now -- the new subway train rather.

7 THE COURT: Let's back up.

8 You said Department of Transportation will not allow a  
9 ramp to be built within a certain distance of entrances to the  
10 subway, is that correct?

11 THE WITNESS: Yes, your Honor.

12 THE COURT: And what is the distance?

13 THE WITNESS: 13 feet within the corner.

14 THE COURT: 13 feet --

15 THE WITNESS: Within the corner of 56th and Second  
16 Avenue.

17 THE COURT: Even though the entrance to the subway  
18 will not be on 56th?

19 THE WITNESS: Yes.

20 THE COURT: Doesn't matter?

21 THE WITNESS: It doesn't matter.

22 THE COURT: What is your understanding -- where did  
23 you get that understanding from? Someone told you that or you  
24 read it some place?

25 THE WITNESS: No, no, no. It's been -- I'm sorry. I

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Georgopoulos - direct

1 didn't bring the records of the Department of Transportation.  
2 It's not permitted, clearly.

3 THE COURT: Well, you learned this by reading a  
4 document or by speaking to a person?

5 THE WITNESS: By a document. It is a directive from  
6 the Department of Transportation.

7 THE COURT: When did you read this document?

8 THE WITNESS: Three weeks ago.

9 THE COURT: Three weeks ago?

10 THE WITNESS: Yes, your Honor.

11 THE COURT: Three weeks ago was in September so in  
12 September, long after you did this report?

13 THE WITNESS: Yes, your Honor. I have searched to  
14 find grounds and possible solutions to this problem.

15 THE COURT: You don't have the document that you  
16 looked at with you today?

17 THE WITNESS: I'm sorry. I don't.

18 THE COURT: Okay. Go ahead.

19 BY MR. STAMATELATOS:

20 Q. And prior to you finding this document, did you do any  
21 other research to see whether a permanent ramp can be  
22 constructed at the Plaza Diner?

23 A. No, I did not.

24 Q. Now, assuming that a ramp can be built at the Plaza Diner,  
25 assuming consent is given by the City and the Department of

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Georgopoulos - direct

1 Transportation and for that ramp to be ADA compliant, can you  
2 tell us approximately the size of the ramp?

3 A. I have done a sketch and design. The ramp must be 15 and a  
4 half feet long including the platform.

5 MR. SHORE: Can you repeat?

6 THE COURT: I didn't hear either. Are you looking at  
7 a document? What are you looking at?

8 THE WITNESS: I did a sketch here.

9 THE COURT: You did a sketch?

10 THE WITNESS: For my own reference.

11 THE COURT: That is not in evidence.

12 MR. STAMATELATOS: I don't have a copy. I wasn't  
13 aware that he had a sketch, your Honor.

14 THE COURT: When did you do the sketch?

15 THE WITNESS: Again, I did this like a couple of weeks  
16 ago.

17 THE COURT: Couple of weeks ago you did this sketch?

18 THE WITNESS: Yes, your Honor. I was preparing myself  
19 to testify.

20 THE COURT: All right. So I assume, Mr. Shore, have  
21 you seen this sketch?

22 MR. SHORE: No, your Honor.

23 THE COURT: So, is this something that you are seeking  
24 to introduce into evidence, Mr. Stamatelatos?

25 MR. STAMATELATOS: If I can take a minute to look at

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Georgopoulos - direct

1 it, your Honor? I wasn't aware that he had a sketch.

2 THE WITNESS: It is nothing official.

3 MR. SHORE: How many -- what amount of inches did he  
4 say for the ramp?

5 THE WITNESS: 13 feet. 13, 1-3.

6 MR. STAMATELATOS: I am -- I would like to introduce  
7 it if the Court will allow him to look at his notes. It is a  
8 rough sketch to refresh his recollection.

9 THE COURT: That's fine. I just want -- if he has got  
10 notes then notes are things probably the plaintiff should able  
11 to look at.

12 THE WITNESS: These are my notes.

13 THE COURT: Approximately.

14 THE WITNESS: Approximately.

15 THE COURT: You will get a chance to look at it before  
16 you do the cross. Do you need the sketch back?

17 So 13 feet, that's how long the ramp would have to be?

18 THE WITNESS: Including the platform. We need a  
19 platform in front of the door entrance to be five by five.

20 THE COURT: So, what you call a platform would be the  
21 flat area right in front of the door?

22 THE WITNESS: Yes, your Honor.

23 THE COURT: Five by five?

24 THE WITNESS: Yes.

25 THE COURT: And then the ramp would then be eight feet

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Georgopoulos - direct

1 extended from that platform?

2 THE WITNESS: Yes.

3 THE COURT: And the incline of what, one inch per  
4 every 12 inches?

5 THE WITNESS: One inch to a foot, yes.

6 BY MR. STAMATELATOS:

7 Q. Can you tell us how wide the ramp would be?

8 A. The width of it must be five feet.

9 Q. What do you think the cost of something like that would  
10 entail?

11 A. I guesstimated a cost installing the ramp in that  
12 restaurant, I estimate \$12,000.

13 THE COURT: \$12,000 to build the ramp?

14 THE WITNESS: To build a ramp and rail around it.

15 THE COURT: Ramp, rail, and platform?

16 THE WITNESS: And platform.

17 BY MR. STAMATELATOS:

18 Q. When you talk about platform, do you mean the landing?

19 A. The landing. Sorry.

20 THE COURT: I understand. \$12,000. Okay.

21 Q. Now, once the platform, the ramp is there, can somebody  
22 that's handicapped and in a wheelchair still access the diner?

23 A. I don't believe so. To my experience I don't believe so.

24 You need certain distances from the door to the wall plus  
25 certain distance in the vestibule.

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Georgopoulos - direct

1 Q. So, there is a vestibule at the Plaza Diner?

2 A. There is a vestibule, yes.

3 Q. Does the vestibule conform to the ADA code?

4 A. No, it does not.

5 Q. What would one have to do to make it comply with the ADA  
6 Code?

7 A. I have measured the vestibule, it is about a five foot  
8 depth. It has to be enlarged to seven feet.

9 Q. Seven feet by how many feet?

10 A. By five feet.

11 THE COURT: What is it currently?

12 THE WITNESS: It is five by four.

13 THE COURT: Five by four. And it would be need to be  
14 extended to five by seven.

15 THE WITNESS: Five by seven.

16 THE COURT: Five by seven. Five by four would have to  
17 be extended to seven feet?

18 THE WITNESS: To seven feet.

19 BY MR. STAMATELATOS:

20 Q. So, if one changes the vestibule, would that result in any  
21 loss of seating capacity to the Plaza Diner?

22 A. Yes, it would. It would have an attached booth adjacent to  
23 the vestibule which will have to be eliminated.

24 Q. And why is that? Why does the booth have to be eliminated?

25 A. Because if you take two feet from that booth then it

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1 becomes useless.

2 Q. And how many seats would the restaurant lose if that booth  
3 is removed?

4 A. It would loose four seats.

5 Q. Do you know whether the aisle --

6 THE COURT: Wait. Before we do that maybe I'm getting  
7 ahead of you, but what would it cost to reconfigure the  
8 vestibule to be compliant with the ADA? Have you got that?

9 THE WITNESS: I know in my affidavit I tried to -- I'm  
10 not sure, maybe \$5,000 to \$10,000. I'm not sure because it's a  
11 glass vestibule. When you move it -- the wall towards the  
12 booth -- you have to move the door as well, and then the  
13 seating, it's going to be damaged and the floor as well as the  
14 exterior storefront of the restaurant. It's all interconnected  
15 so moving the wall two feet it creates a big problem.

16 THE COURT: Can we stop here, have lunch, and then  
17 come back at 2:00? I would normally not take as long as lunch  
18 but I'm on the grievance committee for the court house and I  
19 have to do that one.

20 MR. STAMATELATOS: That's fine, your Honor.

21 THE COURT: So, Mr. Georgopoulos, you can be here at  
22 2:00?

23 THE WITNESS: I will be here, your Honor.

24 THE COURT: All right. Thank you, all.

25 (Luncheon recess)

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(Continued on next page)



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## A F T E R N O O N   S E S S I O N

2:03 p.m.

THE COURT: Mr. Georgopoulos, why don't we have you.  
come back up. I hope everybody had a better lunch than me.

MR. STAMATELATOS: Can you read us the last question?

(Record read)

BY MR. STAMATELATOS:

Q. There are two bathrooms at the Plaza Diner?

A. Yes, there are.

Q. Are those two bathrooms ADA compliant?

A. No, they're not.

Q. What would it require for those two bathrooms to become ADA  
compliant?

A. They will have to be demolished, practically rearranged.  
The walls must be rearranged and the fixtures to be relocated.

Q. So, it is my understanding then as it presently exists by  
not enlarging the bathrooms they cannot be made ADA Complaint?

A. No. Not as it presently is, no.

THE COURT: Well, in what ways are the bathrooms not  
compliant?

THE WITNESS: They're not wide enough.

THE COURT: So size?

THE WITNESS: They're supposed to be five foot wide by  
seven.

THE COURT: Five by seven?

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Georgopoulos - direct

1 THE WITNESS: Five by seven is the minimum size of the  
2 bathroom.

3 THE COURT: How big is the bathroom as currently  
4 configure.

5 THE WITNESS: One is --

6 MR. STAMATELATOS: Look at the report. Length wise it  
7 is bigger, it is like eight feet long by four and a half feet  
8 wide. The other one is four by five and a half.

9 THE COURT: Four by five and a half?

10 THE WITNESS: Yes, your Honor.

11 THE COURT: Other than size in what other ways are the  
12 bathrooms not compliant?

13 THE WITNESS: Well, the doors must be three feet wide  
14 which I believe they are.

15 THE COURT: So they are.

16 THE WITNESS: The doors are wide, they're three  
17 footers, both of them.

18 THE COURT: What about grab bars?

19 THE WITNESS: The grab bars must be two grab bars in  
20 each bathroom, one behind the toilet and one next to it.

21 THE COURT: And is that the case when you went to the  
22 restrooms.

23 THE WITNESS: One bathroom has two grab bars, the  
24 other one has one.

25 THE COURT: And the grab bars were in the right

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Georgopoulos - direct

1 location or higher or lower, different?

2 THE WITNESS: They were in the right location.

3 THE COURT: They were in the right location.

4 There has been talk about lack of insulation or  
5 something that would prevent the pipes under the sink from  
6 being exposed?

7 THE WITNESS: Yes.

8 THE COURT: Do you understand that?

9 THE WITNESS: Yes. Under the sink the wheelchair  
10 person might touch the hot pipe under the sink.

11 THE COURT: So you wouldn't have to demolish the  
12 bathroom to insulate the pipes or install a grab bar?

13 THE WITNESS: No.

14 THE COURT: How much would it cost to insulate the  
15 pipes.

16 THE WITNESS: To insulate the pipes only?

17 THE COURT: Yes.

18 THE WITNESS: \$500.

19 THE COURT: \$500?

20 THE WITNESS: Something like that.

21 THE COURT: Why? What would be entailed?

22 THE WITNESS: We usually cover the pipes with  
23 protective metal covers.

24 THE COURT: How much does it cost to purchase and  
25 install a grab bar?

1AC5kreT

Georgopoulos - direct

1 A. A grab bar is \$500 to \$300. \$500? You might have to break  
2 the wall, put reinforcing the wall. \$500 to \$1,000.

3 THE COURT: Any other violations? A mirror has to be  
4 in a different location, is that true?

5 THE WITNESS: The mirror might have to be lower.  
6 Usually you would put the mirror on an angle, a slight angle.

7 THE COURT: How much would that cost to make  
8 compliant?

9 THE WITNESS: \$200.

10 THE COURT: Any other things you can think about?  
11 Soap dispenser or anything like that?

12 THE WITNESS: I don't recall, your Honor.

13 THE COURT: Okay.

14 THE WITNESS: I don't remember soap dispenser.

15 THE COURT: All right.

16 BY MR. STAMATELATOS:

17 Q. Now, the aisle which leads from the vestibule to the  
18 bathroom, is that ADA complaint?

19 A. No, it is not.

20 THE COURT: What is wrong with it?

21 THE WITNESS: It's 34 inch -- 33 inches wide.

22 THE COURT: How wide does it need to be?

23 THE WITNESS: It needs to be 36 inches minimum.

24 BY MR. STAMATELATOS:

25 Q. If we have to, if the Plaza Diner has to make the bathrooms

1AC5kreT

Georgopoulos - direct

1 ADA complaint --

2 THE COURT: The bathrooms or the aisle?

3 MR. STAMATELATOS: The bathroom.

4 THE COURT: I thought were talking about the aisles.

5 BY MR. STAMATELATOS:

6 Q. I will just do the bathrooms.

7 A. In the middle of the restaurant there is a row of three,  
8 two people seating, that has to be eliminated.

9 Q. Why does that have to be eliminated?

10 A. In order to make the aisle wide enough, the booths are  
11 small, very small the way they are now, cannot be reduced.  
12 Let's say to replace the booths and make them smaller to  
13 increase the aisle it has to be eliminated.

14 THE COURT: You need to have three inches in the  
15 aisle, right, according to what you just said?

16 THE WITNESS: Yes, your Honor.

17 THE COURT: Is it possible to shave on inch or two on  
18 the tables on either side of the aisle?

19 THE WITNESS: It is not the tables, it is the booth.  
20 In other words, you have to replace all the booths.

21 THE COURT: You would have to replace all of the  
22 booths.

23 BY MR. STAMATELATOS:

24 Q. Would you have to replace all the booths?

25 A. Because of the way they are constructed you cannot really

1AC5kreT

Georgopoulos - direct

1 shave. If you insist, it has to be -- the whole thing must  
2 be -- the structure of the booth is such that it has to be  
3 reconstructed.

4 THE COURT: Can you show the witness Plaintiff's  
5 Exhibit 15, no. 24?

6 MR. STAMATELATOS: 15-24.

7 THE COURT: Yes, the photograph. I think it is of the  
8 aisle.

9 Do you have that, Mr. Shore?

10 MR. SHORE: Yes, I do, your Honor.

11 THE COURT: Do you have it?

12 THE WITNESS: Yes.

13 MR. SHORE: Yes.

14 THE COURT: Looking at that photo Mr. Georgopoulos.

15 THE WITNESS: Yes, your Honor.

16 THE COURT: That's a pretty good picture of the aisle,  
17 right?

18 THE WITNESS: Yes.

19 THE COURT: So, you are saying there is no way to add  
20 three inches to that aisle without basically taking out the  
21 booths and replacing them with something else?

22 THE WITNESS: As we can see, there is an expensive  
23 wood or cap wrapping around the sides. It is very difficult to  
24 alter the booths on both sides.

25 BY MR. STAMATELATOS:

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Georgopoulos - direct

1 Q. Let me ask you this. Let's say you do make the booths  
2 shorter so the aisle is wider, would those booths be ADA  
3 complaint?

4 THE COURT: The booths have to be ADA complaint?

5 THE WITNESS: I don't think so. They're very tight  
6 the way they are now. They are very small for a normal person  
7 to sit in. It is very tight and small, too. Like, we can see  
8 one person sitting, his body is projecting beyond the booth.  
9 They're very small.

10 THE COURT: All right.

11 BY MR. STAMATELATOS:

12 Q. So, if one had to demolish the bathrooms and make them ADA  
13 compliant, would the Plaza Diner lose any seating because of  
14 that?

15 A. It would definitely lose at least one -- at least one  
16 booth.

17 Q. Where would that booth be? Which booth are you talking  
18 about?

19 A. The last booth next to bathrooms.

20 Q. And how many seats would that be?

21 A. It would be four seats.

22 Q. Now, do you have an estimate of what it would cost to  
23 change the vestibule, change the bathrooms to change the aisle,  
24 change the booths? What would that cost the Plaza Diner?

25 A. As I have in my report, I thought again -- and again, this

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Georgopoulos - direct

1 is a very conservative estimate -- it would be about \$13,000 to  
2 change -- to rearrange the bathrooms, \$10,000 about to --  
3 \$5,000 to \$10,000 as I said for the vestibule. And then to  
4 rearrange the seating it would be the in the area of \$45,000 to  
5 \$50,000.

6 THE COURT: \$45,000 to \$50,000?

7 THE WITNESS: I have \$65,000 total, which includes the  
8 bathrooms, the vestibule, and the rearrangement of the seating.

9 BY MR. STAMATELATOS:

10 Q. Now, is there another aisle which is between the middle row  
11 of booths an the stools at the counter? Is there another  
12 aisle?

13 A. There is another aisle there.

14 Q. Do you know the width of that aisle?

15 A. I don't recall, but it is definitely less than three feet.

16 Q. So, is that the reason why you say one would have to  
17 basically remove that middle aisle of booths which contains six  
18 seats?

19 A. Definitely. In order for the access to be accomplished in  
20 the bathrooms the middle aisle must be removed.

21 Q. So, if one has to change the vestibule, make the aisles  
22 accessible according to the ADA code and change the bathrooms,  
23 how many seats would the Plaza Diner lose?

24 A. It would lose like 10 to 12 seats.

25 MR. STAMATELATOS: I have no further questions, your



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Georgopoulos - direct

1 Honor.

2 THE COURT: Mr. Shore, cross-examination.

3 CROSS EXAMINATION

4 BY MR. SHORE:

5 Q. Is it your opinion that a permanent ramp can be installed  
6 outside the Plaza Diner located at 1066 Second Avenue?

7 THE COURT: I didn't hear the question.

8 THE WITNESS: I'm sorry, will you repeat?

9 Q. Is it your opinion that a permanent ramp can be installed  
10 outside of the Plaza Diner directly adjacent to the restaurant  
11 on Second Avenue?

12 A. On Second Avenue, on my opinion you cannot have a permanent  
13 ramp.

14 Q. What is the reason for your opinion -- other than the  
15 Department of Transportation issue that you raised earlier.  
16 Have any other reason that a permanent ramp cannot be  
17 installed?

18 A. I believe the main reasons, they don't permit this  
19 condition because at the turn of the corner you cannot have  
20 obstacles beyond the corner of the building.

21 THE COURT: This is the Department of Transportation?

22 THE WITNESS: The Department of Transportation or  
23 Department of Buildings.

24 THE COURT: Or Department of Buildings.

25 THE WITNESS: Department of transportation.

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Georgopoloulos - cross

1 Department of Buildings does not have jurisdiction beyond the  
2 property line of the property. It is a sidewalk issue.

3 BY MR. SHORE:

4 Q. Doesn't Department of Buildings issue permits for ramps?

5 A. They do, as long as you have approval from the Department  
6 of Transportation and this is a revocable consent for this  
7 which -- it is a revocable consent.

8 Q. Revocable consent?

9 A. Revocable consent.

10 Q. Can you explain what that means?

11 A. It is a special permit that you will have to pay rent every  
12 year as long as their ramp exists, otherwise the Department of  
13 Transportation might come in and remove the ramp.

14 Q. You're basically stating that in order to have a ramp you  
15 have to pay rent to the Department of Transportation?

16 A. You have to have a revocable consent. They call it  
17 revocable consent. That means that they give you the, I  
18 suppose -- I'm not a lawyer, but they give you the permit to  
19 have it but it can be removed as per their jurisdiction at any  
20 time.

21 Q. Do you know where the entrance for the Second Avenue subway  
22 is going to be installed?

23 A. One entrance would be at the corner of 55th Street.

24 Q. Do you know where the --

25 A. And Second Avenue.

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Georgopoloulos - cross

1 Q. Do you know where the Second Avenue diner is located?

2 A. On 56th Street, of course.

3 Q. You stated on your review of the document three weeks ago  
4 which was the basis for your opinion that the Department of  
5 Transportation would not allow a ramp to be built outside the  
6 Plaza Diner, is that correct?

7 A. Yes.

8 Q. And you also stated that you hadn't received any other  
9 information, either verbal or written or by any other means  
10 regarding that issue, is that correct?

11 A. Well, I spoke to them and they referred me to this  
12 directive.

13 Q. When did you speak to them?

14 THE COURT: Them being the Department of  
15 Transportation?

16 MR. SHORE: Yes.

17 THE COURT: I'm asking the witness.

18 THE WITNESS: Three weeks ago, your Honor. Three or  
19 four weeks ago before I obtained the directive. They directed  
20 me on how to go, where to find the regulations.

21 THE COURT: No. My point is you say you spoke to  
22 them. Who did you speak to?

23 THE WITNESS: Department of Transportation.

24 THE COURT: Who? Did you just call a number or did  
25 you have an actual person that you were directed to?

1AC5kreT

Georgopoloulos - cross

1 THE WITNESS: I called the number.

2 THE COURT: Was there any actual person that you spoke  
3 to that you know? Do you know their name?

4 THE WITNESS: I don't remember his name.

5 BY MR. SHORE:

6 Q. Did you go to the Department of Transportation?

7 A. No. I downloaded this from the system.

8 Q. From what system? Online? The internet?

9 A. Online.

10 Q. Did you review a document online?

11 A. Yes, I did.

12 Q. What was the name of it?

13 A. May I please ask my lawyer if they have it?

14 THE COURT: Well, do you remember the name?

15 MR. STAMATELATOS: If I may, your Honor, somebody has  
16 brought a copy of the document.

17 THE COURT: Well, you can get into this on redirect.  
18 If you want to look at it now, Mr. Shore, you can do that.

19 MR. SHORE: Sure. I will take a look at the document.

20 BY MR. SHORE:

21 Q. Without this revocable consent, without the subway issue,  
22 could a ramp be built outside the Plaza Diner? If a subway  
23 wasn't being built on Second Avenue could a permanent ramp be  
24 built?

25 A. Not in my opinion.

1AC5kreT

Georgopoloulos - cross

1 Q. Why is that?

2 A. It is there described in the report.

3 Q. You stated the first time you found out about this  
4 Department of Transportation issue was three weeks ago,  
5 approximately?

6 A. Three to four weeks ago, yes.

7 Q. And you had no other -- you had no other knowledge the  
8 Second Avenue subway not allowing a permanent ramp, is that  
9 correct?

10 A. Well --

11 Q. It is a yes or no answer. I think you have already  
12 testified to it as well.

13 A. No.

14 THE COURT: Well, in your report which is dated June  
15 29th you wrote: Due to the proximity of the existing subway  
16 tunnel, the floor elevation and structural members cannot be  
17 revised. The tunnel existed prior to the renovation of the  
18 store and is now part of the new subway tunnel for the Second  
19 Avenue subway line with future entrance at 56th Street. Is  
20 this part of what you're saying now, that they can't build a  
21 ramp or what you are saying is that after you wrote this report  
22 you learned new information?

23 THE WITNESS: When I wrote this my thought was I was  
24 trying to explain that there is no way to change the elevation  
25 of the restaurant itself by eliminating the step or having a

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Georgopoloulos - cross

1 ramp inside the restaurant.

2 THE COURT: What you wrote is the Department of  
3 Transportation officials said no permits are being given in  
4 that area for permanent structures. So, you had a conversation  
5 with someone from the Department of Transportation?

6 THE WITNESS: Yes, I did.

7 THE COURT: And who was that? Who did you speak to?  
8 Do you know?

9 THE WITNESS: I don't remember specific names, your  
10 Honor.

11 THE COURT: They said -- whoever it was you spoke to  
12 said that there were no permits being given for permanent  
13 structures in the vicinity of Second Avenue on 56th Street?

14 THE WITNESS: Yes. Yes.

15 THE COURT: Go ahead.

16 MR. SHORE: Your Honor, this document is dated  
17 November 16th, 2005. I see no reason to --

18 THE COURT: You don't have to do anything with it.

19 MR. SHORE: The document that was handed to me by  
20 defense counsel is dated 2005 regarding revocable consents --

21 THE WITNESS: Can I please?

22 MR. SHORE: It is inapplicable to this matter.

23 BY MR. SHORE:

24 Q. So, when you wrote your report June 29th, 2011, what was  
25 the basis for you stating that the subway tunnel, the floor

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Georgopoloulos - cross

1 elevation and structural members could not be revised? What  
2 was the basis for you putting in the subway tunnel as a reason  
3 for not being able to install a permanent ramp outside the  
4 diner if you haven't talked to anyone or you haven't reviewed  
5 any report?

6 A. I applied for a change of interest in another building on  
7 56th street and was rejected.

8 Q. Was building was it?

9 A. The building adjacent to this building.

10 Q. What was the number of the building?

11 A. I don't recall. It is immediately next to it, less than.  
12 100 feet.

13 Q. Is it a residence or?

14 A. Commercial.

15 Q. A what?

16 A. It is a commercial building.

17 Q. Commercial building.

18 And when you say adjacent is it north, south, east or  
19 west of the entrance door?

20 A. East of this building. The adjacent building east of this  
21 building.

22 Q. On the other side of the street of Second Avenue?

23 A. No, on the same side, east of this building on 56th.

24 Q. Who is the owner of the building?

25 A. The same owner.

1AC5kreT

Georgopoloulos - cross

1 Q. When you say the same owner you mean J.J.N.K. Corp?

2 A. Yes, sir.

3 Q. Are you related to anyone from J.J.N.K. Corp?

4 A. No.

5 Q. Because earlier you stated we would lose seating if changes  
6 to the vestibule were made. When you say we, who are you  
7 referencing? Were you referencing you and --

8 A. I'm sorry? Repeat.

9 Q. Are you related to anyone from Second Avenue Diner Corp.?

10 A. No, sir.

11 Q. Are you personal friends with anybody from Second Avenue  
12 Diner Corp.?

13 A. No, sir.

14 Q. Are you personal friends with anybody from J.J.N.K. Corp?

15 A. I know the people. I don't --

16 Q. How long have you known them?

17 A. 30 years.

18 THE COURT: Who do you know at J.J.N.K.?

19 THE WITNESS: Mr. Kalas.

20 THE COURT: Which one?

21 THE WITNESS: Jerry Kalas.

22 THE COURT: Jerry.

23 THE WITNESS: Yes.

24 THE COURT: Is that the father of John Kalas?

25 THE WITNESS: Yes.



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Georgopoloulos - cross

1 THE COURT: Father of Nick Kalas?

2 THE WITNESS: Yes.

3 THE COURT: All right.

4 BY MR. SHORE:

5 Q. Have you been charged any fee to appear today or provided  
6 your report or expert affidavit?

7 A. Yes. Of course.

8 Q. What was the fee?

9 A. \$5,000.

10 Q. \$5,000; \$5,000 for what?

11 A. To prepare the report; for my time and today.

12 Q. When were you retained by -- who were you retained by?

13 A. Jerry Kalas.

14 Q. Does Jerry Kalas have any involvement with J.J.N.K. Corp.?

15 Is Jerry Kalas an owner or principal of J.J.N.K. Corp. are you  
16 aware of?

17 A. I don't know.

18 Q. Are you here on behalf of anyone? Are you here on behalf  
19 of an individual who is not a part of this case?

20 MR. STAMATELATOS: Objection, your Honor. Leading.

21 He is testifying as to his report and opinion as to the Second  
22 Avenue Diner, your Honor.

23 THE COURT: Sustained. He is an expert -- he is the  
24 defendant's expert. You can explore who is paying him and what  
25 the relationship for bias is but he is clearly the defense

lAC5kreT

Georgopoloulos - cross

1 expert.

2 BY MR. SHORE:

3 Q. When were you first retained by Jerry Kalas in this matter?

4 A. I first found out when they called me about this last June.

5 Q. In June of 2011?

6 A. Yes.

7 Q. Had you ever appeared in this court house prior to June of  
8 2011?

9 A. No.

10 Q. Regarding this case? No?

11 A. No.

12 Q. Do you know what court house you're in?

13 A. Do I know the court house I'm in?

14 Q. Do you know what court house you are in, what the address  
15 is?

16 A. Yes.

17 Q. What is it?

18 A. 500 Pearl Street.

19 Q. You are stating that you have never appeared at a  
20 settlement conference or a court conference before on this  
21 case?

22 A. I've been here before but it was after -- you are asking me  
23 before June 11?

24 Q. Have you appeared on any -- have you appeared at a  
25 settlement conference in this case?

1AC5kreT

Georgopoloulos - cross

1 A. I have been here once but I don't -- I did not appear  
2 anywhere to anybody.

3 Q. You were here on a settlement conference regarding this  
4 case previously, regarding this matter?

5 A. I was here but I did not appear anywhere. I did not -- I  
6 was here but I did not speak or say anything.

7 Q. And it involved this case, correct?

8 A. Involving this case.

9 THE COURT: When was that? Was it before or after  
10 June?

11 THE WITNESS: It was after June, I believe. I don't  
12 recall.

13 It was after June, wasn't it?

14 BY MR. SHORE:

15 Q. You didn't speak or give an estimate of how much the  
16 bathroom would cost to renovate at that time?

17 A. Yes. Yes, I did.

18 Q. You did. And what was that amount? You're under oath.

19 MR. STAMATELATOS: I'm going to object, your Honor.

20 THE WITNESS: I don't recall. I remember I --

21 THE COURT: Wait. Don't answer yet.

22 What is your basis for the objection?

23 MR. STAMATELATOS: Your Honor, if it was during the  
24 settlement conference before Magistrate Peck it is not allowed,  
25 your Honor. If that's what Mr. --

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Georgopoloulos - cross

1 THE COURT: I have no idea what it was.

2 MR. SHORE: It was --

3 THE COURT: All right. So --

4 MR. SHORE: -- settlement conference.

5 THE COURT: You are trying to impeach him for what,  
6 saying something different on a prior occasion?

7 MR. SHORE: Yes.

8 THE COURT: I don't know what your arrangement was  
9 with Judge Peck, I wasn't involved in that.

10 MR. SHORE: I think it is confidential, your Honor, so  
11 out of respect for Judge Peck I will strike it from the record.

12 THE COURT: All right.

13 BY MR. SHORE:

14 Q. Now, you stated -- did you review the document regarding  
15 the Department of Transportation online or did you go to the  
16 Department of Transportation and review the document pertaining  
17 to the subway?

18 A. Online.

19 Q. What was the website address?

20 A. Department of Transportation is at 55 Worth Street.

21 Q. Can you repeat that, please?

22 A. 55 Worth Street.

23 Q. That's the name of the internet address, 55 Water Street  
24 or?

25 A. Department of Transportation address.

1AC5kreT

Georgopoloulos - cross

1 Q. My question is did you look online or did you go to the  
2 Department of Transportation?

3 A. I looked online.

4 Q. And what website did you go to?

5 A. It's in Google.

6 Q. Do you remember the --

7 MR. STAMATELATOS: I object, your Honor.

8 THE WITNESS: I don't --

9 MR. STAMATELATOS: I object. I don't know where is he  
10 going with this line of questioning.

11 THE COURT: It is testimony about him looking at a  
12 document from the Department of Transportation. I think it is  
13 clearly --

14 MR. STAMATELATOS: Mr. Shore didn't want to introduce  
15 it, your Honor.

16 THE COURT: So what. He's testified about having gone  
17 to the Department of Transportation's website. It is fair  
18 game.

19 Go ahead.

20 THE WITNESS: What is the question again?

21 BY MR. SHORE:

22 Q. So, the document you reviewed is on the Department of  
23 Transportation website?

24 A. I have downloaded it in my office. I did not take it from  
25 the Department of Transportation.

1AC5kreT

Georgopoloulos - cross

1 Q. But the sole basis for you stating that a permanent ramp  
2 can't be built because of the installation of the Second Avenue  
3 subway is based on a document you reviewed on the Department of  
4 Transportation website, is that accurate?

5 A. You -- I guess I misinterpret myself. The ramp cannot be  
6 installed anywhere in New York within 15 feet from the corner  
7 of any building regardless whether it is subway or not subway.

8 THE COURT: Wait. Is this anything to do with the  
9 subway or it is irrelevant?

10 THE WITNESS: It is irrelevant, your Honor, to my  
11 understanding.

12 THE COURT: Okay.

13 BY MR. SHORE:

14 Q. Now, you're stating that any place of public accommodation  
15 or any building cannot have a ramp within 15 feet of the  
16 corner?

17 A. Yes.

18 Q. Where did you receive that information from? What is the  
19 basis for your saying that?

20 A. Department of Transportation.

21 Q. The Department of Transportation does not issue building  
22 permits. Are you aware of that?

23 A. Yes, I know.

24 Q. So, why are you stating that the Department of  
25 Transportation would --

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Georgopoloulos - cross

1 A. In order to obtain building department permit you have to  
2 have a Department of Transportation approval permit prior to  
3 the building department permit.

4 Q. How many building permits have you been involved in  
5 applying for?

6 A. Hundreds, if not thousands.

7 Q. What is your background? Where did you go to college?

8 A. City University of New York.

9 Q. What year did you graduate?

10 A. '76.

11 Q. Have you ever been convicted of any crimes?

12 MR. STAMATELATOS: Object, your Honor. I don't know  
13 where Mr. Shore is going with this questioning.

14 THE WITNESS: No, sir.

15 THE COURT: Do you have a good faith basis to ask that  
16 question? Do you think he has been convicted of a crime?

17 MR. SHORE: He has basically perjured himself in his  
18 expert affidavit and during the testimony today stating that  
19 the subway had something to do with not being able to install a  
20 permanent ramp so he has perjured himself in his expert  
21 affidavit and he has also perjured himself during the testimony  
22 today.

23 THE COURT: That's a pretty strong accusation. I  
24 would step lightly if I were you. But, do you have a basis to  
25 believe that Mr. Georgopoulos has been convicted of a crime?

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Georgopoloulos - cross

1 MR. SHORE: No, I'm just inquiring into his background  
2 as I would in a deposition.

3 THE COURT: But this is not a deposition and so if you  
4 have a good faith basis to ask certain questions -- just watch  
5 it.

6 MR. SHORE: Okay.

7 BY MR. SHORE:

8 Q. Where did you receive your training to become an architect?

9 MR. STAMATELATOS: I object, your Honor. Is Mr. Shore  
10 trying to show that Mr. Georgopoulos is not an expert and  
11 cannot testify today?

12 THE COURT: Maybe. I am being asked to rely on his  
13 testimony. If Mr. Shore wants to impeach the credibility of  
14 the witness, he is free to do that. If he wants to impeach his  
15 credential as an expert, he can do that.

16 BY MR. SHORE:

17 Q. Where did you receive your training to be an architect?

18 A. Practicing architecture I graduated six years. I have a  
19 masters in city planning.

20 Q. Where did you graduate from?

21 A. City University of New York.

22 Q. When did you become a registered architect? What year?

23 A. '82.

24 THE COURT: Registered or is it licensed? What is the  
25 process?



1AC5kreT

Georgopoloulos - cross

1 THE WITNESS: Licensed. Registered.

2 THE COURT: Licensed 1982.

3 BY MR. SHORE:

4 Q. Has your architectural license ever been revoked?

5 A. No.

6 Q. Has it been -- do you have to renew an architectural  
7 license?

8 A. Of course. Every three years.

9 Q. Have you renewed it every three years since 1982?

10 A. Yes. Indeed.

11 Q. From 1982 to present can you tell me a little bit about  
12 your employment history?

13 A. Since 1987 I'm employed on my own, I have my own firm.

14 Q. What about --

15 A. Prior to that I was working for several architecture firms.

16 Q. What is the name of law firm -- or excuse me, your  
17 architectural firm?

18 A. P. Georgopoulos Architects, P.C.

19 Q. And what does -- are you the only employee at your firm?

20 A. Yes.

21 Q. And who are your typical clients?

22 A. Al Moore Realty.

23 Q. What type of matters do you work on for Al Moore Realty?

24 A. What type of what?

25 Q. What type of matters do you work on for Al Moore Realty?

1AC5kreT

Georgopoloulos - cross

1 A. Mostly apartments, apartment buildings. Some commercial.

2 Q. And what, exactly, do you do for the commercial and  
3 residential buildings as an architect? Are you involved in  
4 design?

5 A. Design and construction supervision, building department  
6 approvals.

7 Q. Isn't it true that to obtain a permit for a permanent ramp  
8 you have to apply for one from the New York City Department of  
9 Buildings?

10 A. Yes, it is.

11 Q. Do you know if the defendants have applied for a permit in  
12 this case? For a permanent ramp?

13 A. I don't think they did. I'm not sure. I don't think they  
14 applied.

15 Q. Is that based on advice you gave them?

16 A. No.

17 Q. Did you ever advise them as to whether a permanent ramp can  
18 or cannot be installed prior to the expert report dated June  
19 29th, 2011?

20 A. No.

21 Q. Do you know how many feet the entrance door of the Plaza  
22 Diner is from the corner of 56th Street? Have you measured it?

23 A. One foot. One or two feet.

24 Q. Are you familiar with the Mayor's Office of People with  
25 Disabilities?

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Georgopoloulos - cross

1 A. Yes, I am.

2 Q. Are you aware that they grant waivers for places of public  
3 accommodation to build ramps?

4 A. Yes, I do.

5 Q. Do you know how many inches the waiver is?

6 THE COURT: Inches the waiver is?

7 THE WITNESS: How many inches?

8 THE COURT: I don't understand the question.

9 BY MR. SHORE:

10 Q. Isn't it true that the New York City Mayor's Office of  
11 Disabilities grants a waiver to restaurants to build permanent  
12 ramps out towards the street onto the sidewalk up to 44 inches?

13 A. Yes, I am.

14 Q. You're aware of that statement and you are affirming it is  
15 true?

16 A. Possible. It is a waiver. I'm not sure if I can. Yes, it  
17 is a waiver. You have to apply to see if it is possible to get  
18 it.

19 Q. Well, a waiver is a waiver. Basically what a waiver  
20 states, basically, that you don't need to apply for a permit,  
21 you are waived from applying for a permit. That's what I'm  
22 referencing.

23 A. Waive to apply for a permit?

24 Q. Yes.

25 A. From the building department?

1AC5kreT

Georgopoloulos - cross

1 Q. Yes.

2 A. I don't think you can get a waiver from applying for a  
3 permit. I have never done that.

4 Q. So, you're not aware that you can obtain a waiver from that  
5 department?

6 A. No, sir. I'm sure you can get a waiver but still you have  
7 to file with the Department of Buildings to obtain a permit.

8 THE COURT: Where does the property line end for the  
9 diner?

10 THE WITNESS: At the face of the wall.

11 THE COURT: Face of the building?

12 THE WITNESS: Yes.

13 THE COURT: And the ramp, the permanent you would be  
14 talking about would be how wide? How many inches from the  
15 property line.

16 THE WITNESS: It must be five feet. That's my  
17 experience.

18 THE COURT: 60 inches?

19 THE WITNESS: 60 inches.

20 MR. SHORE: 60 inches wide.

21 THE WITNESS: As you are saying you can probably get a  
22 waiver if you have a 40 inches ramp. I'm not sure of that.

23 BY MR. SHORE:

24 Q. You stated earlier under direct that the width of the ramp  
25 would have to be 60 inches?

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Georgopoloulos - cross

1 A. 60 inches.

2 Q. What is your basis for that statement? What statutory  
3 authority or standards are you addressing or citing to? Why  
4 would it have to be 60 inches, the ramp and width?

5 A. Because you need a rail -- a rail up against the wall and  
6 the rail to the exterior and the minimum width in between, it  
7 has to be 36 inches minimum between the rails.

8 Q. Between the rails?

9 A. Between the rails.

10 Q. It has to be how many inches?

11 A. 36 inches minimum. But the ramp itself --

12 Q. So, you are stating the rails itself would take up how many  
13 inches?

14 A. The concrete must be beyond the rail. The concrete  
15 platform and ramp must project beyond the rail.

16 Q. Are you familiar with what the ADAG said?

17 A. Yes. Of course I am.

18 Q. Have you reviewed the installation guidelines regarding the  
19 installation of a ramp according to ADAG standards prior to  
20 today?

21 A. Yes.

22 Q. Have you reviewed it in regard to this case particularly?

23 A. From experience. I did not do it with regard to this case  
24 particularly.

25 Q. Is it possible that the ADAG standards allow for less than

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Georgopoloulos - cross

1 50 inches in width for a ramp?

2 A. It's possible.

3 Q. So, you don't necessarily need 50 inches in width to  
4 provide -- to make it accessible?

5 MR. STAMATELATOS: Object, your Honor. He never  
6 testified that they need 60 inches.

7 MR. SHORE: He did testify on direct.

8 THE COURT: I don't need the lawyers to argue.  
9 Overruled.

10 Go ahead.

11 BY MR. SHORE:

12 Q. So, the maximum width for installing a ramp would be five  
13 feet or 60 inches but the ramp could also be less than that,  
14 correct, the width of a permanent ramp?

15 A. Please, let me explain.

16 The concrete of the ramp must be 60 inches. When you  
17 install the handrails left and right you are losing width on  
18 the ramp. Last you need protection at the bottom of the rail  
19 so that the small wheels of the wheelchair do not project over  
20 beyond the concrete. It is probably difficult to explain how  
21 it works. I'm talking about the concrete, not the rail, the  
22 concrete.

23 Q. What did you say earlier the cost estimate was for  
24 installing such a ramp?

25 A. About \$12,000.

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Georgopoloulos - cross

1 Q. Are you aware that there is tax incentives for installing  
2 and making places more readily achievable -- readily accessible  
3 for people with disabilities?

4 A. I'm not aware of that, no.

5 THE COURT: What is your understanding of the 15 foot  
6 requirement that you talked about before, the Department of  
7 Transportation --

8 THE WITNESS: Yes, your Honor.

9 THE COURT: -- 15 feet of clearance from what to what?

10 THE WITNESS: 15 feet from the corner of a building.

11 THE COURT: 15 feet from the corner of a building?

12 THE WITNESS: Of the building.

13 THE COURT: What? What is the case?

14 THE WITNESS: Up to 15 feet from the corner of a  
15 building you cannot have a ramp projecting into the sidewalk.  
16 It has to be beyond 15 feet.

17 THE COURT: So, 15 feet from the street or 15 feet  
18 from -- what do you measure the 15 feet from, the corner of the  
19 building to the street?

20 THE WITNESS: If we assume we have a ramp, let's say  
21 along Second Avenue --

22 THE COURT: Let's use a photo. Let's go to  
23 Plaintiff's Exhibit -- I think it is the best photo we have, so  
24 Plaintiff's Exhibit 15, photo 1, the top photograph. Do you  
25 see that? Go to the first page of 15. Looking at the top

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Georgopoloulos - cross

1 photograph it says Plaza Diner.

2 THE WITNESS: Yes.

3 THE COURT: On one side where the main entrance is it  
4 says Plaza Diner where there is a window with no entrance,  
5 correct?

6 THE WITNESS: Yes.

7 THE COURT: Do you see that?

8 THE WITNESS: Yes.

9 THE COURT: Where is Second Avenue in this photo?

10 THE WITNESS: From the corner of the building.

11 THE COURT: So Second Avenue, the woman in the coat  
12 with her handbag on her shoulder is on Second Avenue?

13 THE WITNESS: Yes, your Honor.

14 THE COURT: And the kid with a soda in his hand, he is  
15 on 56th -- facing 56th Street, is that correct?

16 THE WITNESS: Yes.

17 THE COURT: Looking at this photograph, if the ramp  
18 was to the left of the door where does the 15 feet get  
19 measured?

20 THE WITNESS: From the corner that we see.

21 THE COURT: From the corner of the building?

22 THE WITNESS: Of the building. In this case the  
23 building is at the property line.

24 THE COURT: At the corner of this building back to  
25 where there is a dark blind that looks like where it is is



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Georgopoloulos - cross

1 where the Plaza Diner ends; how many feet is that?

2 THE WITNESS: 15 feet -- oh, the width of the building  
3 is I believe 20 feet maybe.

4 THE COURT: 20 feet.

5 So, you're saying a ramp would have to be 15 feet away  
6 from that corner where the building -- well, the corner that is  
7 depicted on the building in this photograph. That's what you  
8 are saying?

9 THE WITNESS: Yes, your Honor.

10 THE COURT: That's based on Department of  
11 Transportation regulations?

12 THE WITNESS: Yes.

13 Same thing along 56th Street when we look on 56th  
14 Street along 56th Street.

15 THE COURT: Yes.

16 THE WITNESS: There is a trap door on the sidewalk,  
17 this is, let's say, about 15 feet. The ramp can be beyond the  
18 trap door.

19 BY MR. SHORE:

20 Q. If you are stating that Department of Transportation  
21 regulations provide that no ramp can be built within 15 feet of  
22 the corner of a building, doesn't that apply to almost any  
23 building?

24 A. To my understanding, yes, any building.

25 Q. So, you are basically stating in the New York -- the

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Georgopoloulos - cross

1 Department of Transportation prevents ramps from being built  
2 throughout the city, is that correct?

3 A. I'm sure they do. Yes, they do.

4 THE COURT: You are talking about buildings on a  
5 corner, right? You are saying not the interior of a block  
6 building.

7 THE WITNESS: On interior blocks they do. Not on the  
8 corner. That's my understanding.

9 THE COURT: I'm just not sure I understand you. The  
10 15 foot requirement that you have been talking about from the  
11 Department of Transportation, that pertains to buildings that  
12 are on the corner or any building?

13 THE WITNESS: Corner buildings.

14 THE COURT: Corner buildings. All right.

15 BY MR. SHORE:

16 Q. When you stated the width of the building is 50 feet --

17 THE COURT: The width of the building?

18 A. Not the width. The width is about 20 feet.

19 Q. 25 feet?

20 A. The length is probably 50.

21 Q. From the corner to the end?

22 A. Along 56.

23 Q. What about the right side of the entrance door to the end  
24 of Plaza Diner, where is the width?

25 A. I'm sorry. Say that again?

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Georgopoloulos - cross

1 Q. What is the width of the Plaza Diner from the right side of  
2 the corner door -- the right side of the entrance door to the  
3 north side of the Plaza Diner?

4 A. It's like a foot or so less than the entire width of the  
5 building. The building ends at the white marble.

6 Q. So, you're stating from the corner of the building to the  
7 north side of the door is one foot?

8 A. One and a half, one foot. I didn't measure it.

9 Q. So, it would be approximately 12 to 16 inches from the  
10 corner of the building to the north side of the --

11 A. To the north side of the door?

12 Q. Yes, right, towards the same -- where the person and the  
13 lady in the handbag is, that side of the door.

14 A. I don't understand. There is no door there. I'm sorry.

15 Q. You don't see a door on the top side, on the picture?

16 A. There is only one door to the building.

17 Q. Yes, I know, for the entrance?

18 THE COURT: I don't understand the question. What is  
19 the question?

20 THE WITNESS: I don't understand the question.

21 Q. I'm asking from the corner of the building to the far side  
22 of the entrance door how many inches is it, approximately?

23 A. The far side to the entrance door.

24 Q. If I can show him?

25 THE COURT: You can direct him.

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Georgopoloulos - cross

1 A. Including the width of the door you mean?

2 Q. From here to here, how many feet?

3 A. It is about four and a half feet.

4 Q. And from here to here?

5 A. One and a half. I did not measure it.

6 Q. You didn't --

7 A. I didn't measure exactly the width of the column.

8 Q. Just so we're clear, the Second Avenue subway would have no  
9 effect on the installation of a permanent ramp an this  
10 location, it is based solely on the alleged 15 feet Department  
11 of Transportation prohibition on installing a permanent ramp in  
12 the corner of a building, is that correct?

13 A. I cannot answer with confidence. I am doing another  
14 restaurant on 86th and Second Avenue and I am in the process of  
15 obtaining a permit from these people. I don't know if I will  
16 get that. I can't tell you for sure.

17 Q. Is there any -- would the Plaza Diner be at least allowed  
18 to apply for a permit or are you stating that this, that the  
19 subway or the 15 inch, do either of those prevent them from  
20 applying for a permit?

21 A. No, I'm not saying nobody is preventing you from applying  
22 for a permit. I'm not applying for a permit. The Second  
23 Avenue Corp., nobody is preventing them to apply for a permit.

24 Q. So they can apply for a permit and it is up to the  
25 Department of Buildings to decide?

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Georgopoloulos - cross

1 A. They can apply for a permit. We don't know if it is going  
2 to be rejected or not. This is up to the Department of  
3 Transportation again. We apply for a permit to the building  
4 department.

5 Q. So, Department of Buildings will either --

6 A. It requests Department of Transportation approval.

7 Q. With regards to the width and length -- the length of the  
8 ramp, you believe there is enough room to install a permanent  
9 ramp length-wise on Second Avenue?

10 A. Length-wise it works. It's okay.

11 MR. SHORE: I don't have any other questions.

12 THE COURT: All right, redirect?

13 MR. STAMATELATOS: Yes, your Honor.

14 THE COURT: Okay.

15 MR. SHORE: Actually, your Honor, can I ask one on  
16 question?

17 Q. Are you familiar with local law 57 -- New York City local  
18 law 57?

19 A. No, I'm not.

20 Q. What is your basis for stating that a unisex bathroom  
21 cannot be installed in the premises?

22 A. If you can please be specific? One bathroom unisex or --

23 Q. One bathroom unisex.

24 A. One bathroom for the entire restaurant?

25 Q. Yes.

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Georgopoloulos - cross

1 A. Based on the amount of occupants you cannot have one  
2 bathroom as per code.

3 Q. What about one -- what about two restrooms, one which is  
4 unisex; what is the basis for stating that that, that you  
5 cannot have a unisex bathroom?

6 A. From what I understand it might be a problem with the  
7 liquor license.

8 Q. Is there a specific section or statute within the liquor  
9 license that states that you have to have -- that you cannot  
10 have a unisex bathroom?

11 A. You have to apply for the liquor license again.

12 Q. Are you stating --

13 A. They might object.

14 Q. They might object to it.

15 There is no requirement with regards to how many  
16 bathrooms you have to have?

17 A. You have to have two bathrooms, I know. I'm not sure if  
18 they will accept one unisex and one small bathroom.

19 Q. And the ADAG standards, do they allow for a unisex  
20 bathroom? Are you aware that Americans with Disabilities has  
21 guidelines that state that you can have a unisex bathroom  
22 within a restaurant?

23 A. You can have a unisex bathroom in a restaurant.

24 Q. You can?

25 A. Yes, you can.

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Georgopoloulos - cross

1 MR. SHORE: No further questions.

2 THE COURT: Okay, Mr. Stamatelatos.

3 MR. STAMATELATOS: Yes, your Honor.

4 REDIRECT EXAMINATION

5 BY MR. STAMATELATOS:

6 Q. Your Honor, I would like the Court to get some clarity,  
7 Mr. Georgopoulos. We're in New York City. If I want to build  
8 a permanent ramp, for example, or the Plaza Diner wants to  
9 build a permanent ramp in front of its diner, what code is  
10 going to apply, the Americans with Disabilities Act and  
11 guidelines or the New York City Department of Buildings code  
12 and the New York City Department of Transportation code? Which  
13 rules from which governmental agency is going to apply?

14 MR. SHORE: Objection, your Honor. There is no  
15 Department of Transportation code.

16 MR. STAMATELATOS: Of course, there is.

17 THE COURT: I'm going to allow the question. I don't  
18 know if there is an answer to it but go ahead.

19 Can you answer the question?

20 Q. Or do you want me to give you an example that Mr. Shore  
21 said?

22 You testified that the ramp has to be five feet wide  
23 if it's about to be built on Second Avenue, correct?

24 A. Uh-huh.

25 THE COURT: You have to say yes or no.

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Georgopoulos - redirect

1 A. Yes. I'm sorry.

2 Q. Mr. Shore said that the ADAG standards say it can be 44  
3 inches?

4 A. Yes.

5 Q. So, if I want to build a permanent ramp or the Plaza Diner  
6 wants to build a permanent ramp in front of its diner, which  
7 code is going to apply?

8 A. It would definitely be an ADA code. It's -- I believe it  
9 is not the building department code or the transit authority  
10 code, it is the ADA code to be sufficient for ADA compliance.

11 Q. Sir, if you can look at the photograph, I believe in your  
12 report if you can have a look at your report, the expert  
13 report, it is in front of you, I believe there is a picture  
14 that you took which shows the front of the Plaza Diner. Do you  
15 see that?

16 A. Yes, I do.

17 Q. Do you see telephone booths in that photograph in front of  
18 you?

19 A. Yes.

20 Q. Now, do you know what the distance is from the telephone  
21 booths to the front of the diner?

22 A. I did not measure that.

23 Q. So let's, for example, install a permanent ramp in front of  
24 the diner, would people be able to pass through on the  
25 sidewalk? Would that be allowed by the city?



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Georgopoulos - redirect

1 A. Again, there is a minimum passageway requirement of eight  
2 feet between the ramp and any street furniture.

3 Q. And, would there be eight feet of clearance for people to  
4 pass by on the sidewalk?

5 A. I can not measure that. I cannot tell.

6 Q. Now, for clarification for the Court as well, I believe  
7 this is the document you were referring to. If you would have  
8 a look at that for a moment?

9 THE COURT: Do you have a number on it?

10 MR. STAMATELATOS: No, your Honor. It is not in  
11 evidence.

12 THE COURT: Let's put a number on it.

13 MR. STAMATELATOS: I just have one copy unfortunately,  
14 your Honor.

15 THE COURT: Well, put it on.

16 MR. STAMATELATOS: Defendant's Exhibit 37 might be.

17 THE COURT: Whatever you think, 37?

18 MR. STAMATELATOS: 37 is fine.

19 THE WITNESS: Rules related to.

20 THE COURT: Wait. Let's mark it.

21 Rules related to revocable consents?

22 THE WITNESS: Revocable consents.

23 MR. SHORE: Is that the complete title of the  
24 document, rules related to -- or maybe if I can see it?

25 MR. STAMATELATOS: You can have a look at it. That is

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1 the only copy I have, unfortunately.

2 MR. SHORE: Your Honor, may I ask a question for a  
3 moment?

4 THE COURT: You'll get a chance to redirect --  
5 recross, so let's -- if you have an objection you can make an  
6 objection.

7 MR. SHORE: I was going to ask regarding the  
8 introduction of exhibits.

9 THE COURT: It hasn't been introduced.

10 MR. SHORE: I will wait to rebut. Basically I want to  
11 know if the Court would take judicial notice of laws that I  
12 mentioned, the ADAG standards.

13 THE COURT: I think I can take judicial notice of  
14 various statutes and regulations.

15 MR. SHORE: Okay.

16 THE COURT: I'm not sure whether this is one of them.

17 MR. STAMATELATOS: I believe that is one of them.

18 THE COURT: Let's explore this.

19 What is the question you're asking?

20 BY MR. STAMATELATOS:

21 Q. Is this the revocable consent document you were referring  
22 to before?

23 A. Yes, it is.

24 Q. Do you find the section in there which says how many feet  
25 from a corner one cannot put up a permanent structure on the

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Georgopoulos - redirect

1 sidewalk?

2 A. This is what I'm looking for.

3 MR. STAMATELATOS: I believe it might be page 17 if I  
4 may direct him, your Honor?

5 THE COURT: What are you asking him? What is on page  
6 17?

7 MR. STAMATELATOS: The regulation that he was  
8 referring to.

9 THE COURT: If you know where it is you can show it to  
10 him.

11 BY MR. STAMATELATOS:

12 Q. Have you found the regulation that you were testifying to  
13 earlier?

14 A. Yes, I do.

15 Q. And can you read the regulation?

16 A. Clearance for a --

17 THE COURT: Wait. What section are you reading from?

18 THE WITNESS: Section 7-06.

19 THE COURT: 7-?

20 THE WITNESS: 06.

21 THE COURT: Okay.

22 Are you --

23 THE WITNESS: Do you want me to read it, your Honor?

24 THE COURT: Let's ask this question. Is this the  
25 regulation or the document from the Department of

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1 Transportation website you were referring to before?

2 THE WITNESS: Yes, it is.

3 THE COURT: And the part that you believe barred the  
4 construction of a permanent ramp is Section 6-06 -- Section  
5 7-06?

6 THE WITNESS: 06.

7 BY MR. STAMATELATOS:

8 Q. How many feet from the corner does that section say one  
9 cannot put up a permanent structure, Mr. Georgopoulos?

10 A. I need one minute, please.

11 Q. Sure.

12 A. I have to read another section before I -- ramps, intended  
13 to provide access for people with disabilities, this is --

14 THE COURT: Section 7-06?

15 THE WITNESS: I go back to 7-03. Sorry.

16 THE COURT: Was there a question about 7-06 first?

17 THE WITNESS: It is --

18 THE COURT: I am asking Mr. Stamatelatos.

19 BY MR. STAMATELATOS:

20 Q. What is the clearance that Section 7-06 provides for?

21 THE COURT: 7-06 C?

22 MR. STAMATELATOS: Just 7-06.

23 THE COURT: 7-06, I pulled it up online, I think it is  
24 the same thing you have got there. Aren't there subsections?

25 MR. STAMATELATOS: You're right, your Honor. I

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1 apologize.

2 THE WITNESS: C, yes.

3 BY MR. STAMATELATOS:

4 Q. C-1. What does that provide firstly, Mr. Georgopoulos?

5 A. No revocable consent will be granted for above ground  
6 structures located within the corner quadrant.

7 THE COURT: Parentheses, the area ten feet from either  
8 side of the area created by extending the building line to the  
9 curb. Is that correct? That's what it says?

10 THE WITNESS: Yes.

11 THE COURT: What does that mean to you? What did you  
12 interpret that to mean? Why don't we look at the exhibit, the  
13 photograph, 15-1.

14 Basically you extend the line on the pavement at the  
15 bottom there moving from the corner of the building --

16 THE WITNESS: From the corner of the building created  
17 by extending the building line to the curb 10 feet.

18 THE COURT: So, what is your understanding? This  
19 regulation requires you to do what or forbids you to do what?

20 BY MR. STAMATELATOS:

21 Q. Can you answer what the judge is asking you  
22 Mr. Georgopoulos, please?

23 A. I am trying understand. Forgive me, I am confused because  
24 this is not what the sections --

25 THE COURT: This is not what?

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Georgopoulos - redirect

1 THE WITNESS: This is not the correct section.

2 THE COURT: It is not the correct section?

3 THE WITNESS: I beg your pardon.

4 THE COURT: What is the section you referred to that  
5 you believe barred the construction of a permanent ramp at the  
6 Plaza Diner?

7 THE WITNESS: I have to look through it because it is  
8 15 feet.

9 THE COURT: Try 27-308.

10 THE WITNESS: I don't have my glasses.

11 THE COURT: Try section 3, clear path.

12 MR. STAMATELATOS: Just listen to the Judge and  
13 concentrate on what he is asking you.

14 THE COURT: 7-06 C-3. Is that what you're referring  
15 to? The reference is 15 feet for a clear path.

16 MR. STAMATELATOS: What section was that, your Honor?

17 THE COURT: 7-06 C-3, second to last sentence. I  
18 don't know that this has anything to do with anything but it  
19 says 15 feet.

20 THE WITNESS: Yes, this is the one. I'm sorry, your  
21 Honor.

22 THE COURT: So, what is the relevant portion of this?

23 THE WITNESS: The minimum width of a clear path shall  
24 be -- the clear path shall be maintained for 15 feet to either  
25 side of the improvement. 15 feet clear path from the corner,

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1 from the building to the sidewalk -- from the building to the  
2 sidewalk construction.

3 MR. STAMATELATOS: I have no further questions.

4 THE COURT: Nothing further.

5 THE WITNESS: Thank you.

6 THE COURT: Mr. Shore, anything you want to cover on  
7 recross?

8 THE WITNESS: I'm sorry, I cannot answer the question.  
9 I'm looking at it.

10 THE COURT: I don't think there is any question  
11 pending.

12 So, Mr. Shore, do you want do any recross?

13 MR. SHORE: No, your Honor. I don't think any is  
14 necessary.

15 THE COURT: Okay. You can step down,  
16 Mr. Georgopoulos. Thank you.

17 THE WITNESS: Thank you.

18 MR. STAMATELATOS: The defendants rest, your Honor.

19 THE COURT: Do you have any other witness you plan to  
20 call on a rebuttal case?

21 MR. SHORE: No, your Honor.

22 THE COURT: No. Well then let's talk about where we  
23 are with this.

24 You can step down, Mr. Georgopoulos.

25 THE WITNESS: Thank you.

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1           THE COURT: It seems to me that this case is really  
2 about whether or not -- whether the barriers or violations that  
3 have been alleged here can be removed in a readily achievable  
4 way. That seems to be what the focus was and should be  
5 according to both the statute and the law as interpreted by  
6 courts. Readily achievable means easily accomplishable and  
7 able to be carried out without much difficulty or expense.  
8 Factors to be considered include the nature and costs of needed  
9 changes, the financial resources of the facility, number of  
10 employees, effect on expenses and resources and other impact on  
11 the facility, the financial resources and size of the covered  
12 entity and the type of operations at the entity in relationship  
13 between the facility and the covered entity which here we have  
14 a landlord and we have the business that is operating in the  
15 location.

16           Plaintiff has to articulate a plausible proposal for  
17 barrier removal, the costs of which facially do not clearly  
18 exceed its benefits, and so one issue is whether the plaintiffs  
19 have done that and then I guess the other issue is whether the  
20 defendants have articulated a basis to conclude that the  
21 changes proposed here would be not readily achievable.

22           Now, there is a variety of different alleged  
23 deficiencies here from the lack of a permanent ramp to lack of  
24 proper signage about a ramp, lack of adequate buzzer or other  
25 things that would allow one to alert people inside that they



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1 are planning to come in. There are alleged violations with the  
2 restrooms both as to the size of the restroom so that's a  
3 little unclear, frankly, to me, and the placement of grab bars,  
4 insulation for pipes, mirrors, that sort of thing, and then  
5 there is also the issue of the aisle clearance and the counter  
6 configuration.

7 So, I'm happy to take argument from you now or maybe  
8 you want to come back tomorrow after you've had a chance to  
9 think about your summations and make an argument then. Or  
10 maybe you want to make written submissions after having  
11 reviewed the transcripts of the testimony. I have to say, I  
12 think that there is holes in both sides' presentation of the  
13 evidence.

14 So, what did you folks intend on doing? Summations?  
15 Oral summations?

16 MR. SHORE: I'm prepared to do a closing. If  
17 Mr. Stamatelatos would like to put it off a day I'm agreeable  
18 to that also. I'm also agreeable to written submissions.  
19 Whatever the Court thinks is advisable.

20 THE COURT: There has been a lot of testimony today,  
21 both direct and cross, about regulations which it is not clear  
22 to me exactly which of the regulations this apply. Mr. Shore,  
23 you suggested that the Court can take judicial notice of the  
24 relevant regulations; federal, city, state, local, I don't know  
25 which regulations you consider to be relevant, but is that

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1 something that I've got at my finger tips right now? I have  
2 Title 42.

3 MR. SHORE: I think perhaps submitting written  
4 submissions would be the best thing.

5 THE COURT: How long do you think you would need to  
6 make those kinds of submissions?

7 MR. SHORE: I could have it done tomorrow. I would  
8 prefer an extra week or two.

9 THE COURT: I would give you a week or two, I would  
10 think, to do written submissions.

11 MR. SHORE: I would appreciate if I could have two  
12 weeks.

13 MR. STAMATELATOS: I think the transcript we can  
14 probably get in a few days and a few weeks would be fine, your  
15 Honor.

16 THE COURT: I think written submissions will be  
17 helpful. I think it will help the parties focus their  
18 arguments and help me to focus what factual disputes are that  
19 are relevant. I think I have identified the most important one  
20 which is readily achievable, but if it in fact turned out to be  
21 the case that New York City regulations barred the construction  
22 of a permanent ramp that close to the corner, that would I  
23 think be dispositive with respect to the ramp. I'm not  
24 prepared to find that today but it seems to me that that would  
25 make it not readily achievable.

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1 Do you agree with that, Mr. Shore, as a hypothetical?  
2 If there is a regulation that says you can't build

3 MR. SHORE: As a hypothetical, yes. I'm not aware of  
4 any such regulation.

5 THE COURT: Well, you saw what the witness was shown  
6 which -- I just went to the website under the assumption that I  
7 can consider things that are regulations that are available to  
8 the Court.

9 MR. SHORE: My expert didn't testify or put in an  
10 expert affidavit so that is something I will have to inquire  
11 with him and also read the regulation that was cited and it is  
12 going to take some time to see if that's actually accurate.  
13 I'm doubtful that it is. That is something that I would like  
14 some time to look into.

15 THE COURT: You can look into it but everybody has  
16 rested at this point so it is not as though --

17 MR. SHORE: Based on the written submission.

18 THE COURT: I'm not planning to open the record again  
19 for expert testimony. If there is something that the Court can  
20 consider, regulations and statutes, then I think I clearly can;  
21 I think parties can make arguments from those.

22 MR. STAMATELATOS: I think that's the way to go.

23 THE COURT: But I don't anticipate reopening the  
24 evidence in a case so that an expert can now take a crack at  
25 interpreting or providing me with how it really works in the

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1 real world based on statutes or regulations that are now part  
2 of the record, right? You are not suggesting that?

3 MR. SHORE: Suggesting what?

4 THE COURT: That we reopen the evidence.

5 MR. SHORE: No. Suggesting written submissions, your  
6 Honor, to assist the Court.

7 THE COURT: So, I think that would be helpful. So,  
8 what do you think, two weeks? Today is Wednesday? Two weeks  
9 from Friday.

10 MR. STAMATELATOS: Should be fine, your.

11 THE COURT: October 28th the parties can make written  
12 submissions related to propose -- you have already made  
13 proposed findings of fact and conclusions of law. Now, I think  
14 this is reference to the actual transcript and exhibits that  
15 were admitted and regulations that are part of the record or  
16 that are deemed available to the Court for judicial notice and  
17 then we will see. Once I have your submissions maybe I will  
18 bring you in for some oral argument so that I can ask questions  
19 or maybe I will just rely on written submissions. Once I have  
20 them then I will be in a position to decide. Okay?

21 MR. STAMATELATOS: That's fine, your Honor.

22 THE COURT: Is there anything else we should do today?

23 MR. STAMATELATOS: I believe nothing else, your Honor.

24 THE COURT: Mr. Shore?

25 MR. SHORE: No, your Honor.

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1 THE COURT: Mr. Kreisler?

2 PLAINTIFF: No. I'm fine, thank you. Thank you,  
3 Judge.

4 THE COURT: I will wait until I get the parties'  
5 submissions, file them on ECF by October 28th. If after  
6 getting the other side's submission you think you would like to  
7 make a response, ask me. I'm not going to set a schedule for  
8 that now because I think it might be unnecessary, but if you  
9 see something that's completely off the wall that you hadn't,  
10 didn't think you could fairly anticipate, you can ask. But  
11 once I have your submissions then I will give you guidance as  
12 to whether I'm going to bring you back or I will rule, okay?

13 MR. SHORE: Are the written submissions basically --  
14 they're going to be submitted on ECF as just a written  
15 submission or memorandum of law?

16 THE COURT: Yes, just a memorandum. Exactly.

17 MR. SHORE: Based on the evidence that was introduced.

18 THE COURT: Nobody should be relying on things that  
19 aren't in evidence. I don't think there should be any dispute  
20 as to what is in. Look at the transcript. If there are  
21 exhibits that for whatever reason didn't get moved in and the  
22 parties stipulate to being in, then you can just -- in fact, I  
23 will ask you to do this. By Friday send me just an exhibit  
24 list. If we had a jury I would ask the parties to send me an  
25 exhibit list of all the exhibits that are in evidence. And if

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1 there is dispute, just indicate where there is dispute but I  
2 don't think there should be disputes. There are not many  
3 pieces of evidence admitted in this trial.

4 So, just send me an exhibit list by Friday so that  
5 we're all on the same page as to what the universe of exhibits  
6 is, and then post-trial submissions by the 28th, okay? All  
7 right. Thanks.

8 Let me thank the court reporter, as always. She never  
9 gets a break. We get to rest once a while but she doesn't.

10 Have a good day. Appreciate it.

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